More employment law reforms ahead

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With no sign of the Employment Bill promised in 2019, the Government has decided to pursue its reforms of the employment law landscape by way of support for a series of Private Members' Bills covering flexible working, carer's leave, neonatal leave and tipping practices

In 2019, the Government promised a new Employment Bill which would make various changes to the employment law framework in the UK. That Bill appears to have fallen by the wayside and, instead, the Government is backing a series of Private Members' Bills that seek to bring about some of the reforms. We discuss four of the new Bills in brief below. You can also read our detailed briefings on the Bills seeking to reform harassment law and redundancy protection for certain employees **here** and **here**.

Changes to the flexible working framework

In September 2021, the Government published a consultation setting out its proposals for change to the flexible working framework. In particular, views were sought on whether the right to request flexible working should become a Day 1 employment right (currently, 26 weeks' service is required before a statutory request can be made). You can read our detailed briefing on the consultation **here**.

The consultation closed on 1 December 2021 and, almost a year later, the Government has still not published a response. Instead, the Government is backing a Private Members' Bill sponsored by the Labour MP, Yasmin Quereshi, which seeks to make modest reforms to the flexible working framework. The Employment Relations (Flexible Working) Bill 2022-23, would amend the law:

- to remove the requirement for employees to explain in their request what effect they think it will have on their employer;

- to allow employees to make two flexible working requests per year rather than one;
- to require employers to consult with the employee before refusing a request; and
- to reduce the deadline for an employer's decision on a flexible working request from three months to two months.

However, the Bill would not take forward the Government's proposal of making the right to request flexible working a Day 1 right. Overall, the proposals would make the process slightly easier for employees and slightly more onerous for employers. The Bill passed its second reading on 28 October 2022 and will now progress to the Committee stage for detailed scrutiny. It is not clear when the reforms will come into force if the Bill eventually passes, but it is unlikely that it would be before the first quarter of 2024 at the earliest.

New right to carer's leave

In September 2021, the Government published its response to a public consultation on proposals for a new right to carer's leave. It confirmed that a Day 1 employment right to one week's unpaid carer's leave would be introduced "as soon as Parliamentary time allowed". You can read our detailed briefing on the proposals set out in the response **here**.

Over a year later the legislation has not materialised. Once again, a Private Members' Bill is attempting to plug the gap. The Carer's Leave Bill, sponsored by the Liberal Democrat MP Wendy Chamberlain, seeks to amend the Employment Rights Act 1996 to allow regulations to be made which would entitle employees to take leave from Day 1 of their employment in order to provide or arrange care for a dependant with a long-term care need. This would cover anyone caring for a spouse, partner, child, parent or other dependant who needs care because of a disability, old age or illness or injury likely to require at least three months of care.

Where eligible, employees taking carer's leave will remain entitled to take other relevant forms of leave such as unpaid time off for dependant emergencies or unpaid parental leave. Eligible employees may also be able to request for temporary (or permanent) flexible working arrangements.

The precise scope and mechanics of the new right would be set out in the regulations, but the Bill provides that the right would be to at least one week's unpaid leave per year. Employees will be protected from detriment and dismissal as a result of having taken carer's leave. Employees will also be able to bring claims for compensation against employers who unreasonably postpone or prevent the taking of carer's leave.

The Bill has passed the Committee stage and will now progress the Report stage and third reading on 3 February 2023, before moving to the House of Lords. If the Bill passes, it is expected that the related regulations will come into force some time in 2024.

New right to neonatal leave and pay

In 2019, the Government consulted on proposals to introduce new rights to neonatal leave and pay. In March 2020, the Government responded to the consultation and committed to introducing these rights. In what is a bit of running theme, over two and a half years later no further steps have been taken by the Government.

The Neonatal Care (Leave and Pay) Bill, a Private Members Bill sponsored by the Scottish National Party MP Stuart C McDonald, intends to make these commitments a reality. The Bill seeks to amend the Employment Rights Act 1996 to allow regulations to be made which would allow employees to take leave from Day 1 of their employment where they are the parent of a baby in neonatal care. Employees with at least 26 weeks' continuous service would also be entitled to be paid statutory neonatal pay.

Again, the precise scope and mechanics of the leave rights would be set out in the regulations, but the Bill provides that the right would be to take at least one week's leave within 68 weeks of the child's birth. The level and duration of statutory neonatal pay will also be dealt with in the regulations.

The Bill has passed the Committee Stage and will now progress to the Report stage and third reading on 3 February 2023, before moving to the House of Lords. If the Bill passes, it is expected that the related regulations will come into force some time in 2024 or early 2025.

Tips, gratuities and service charges to be paid to workers in full

Finally, a proposal of relevance to employers operating in the hospitality sector. The Employment (Allocation of Tips) Bill, a Private Members Bill sponsored by the Conservative MP, Dean Russell, would require employers to ensure that all tips, gratuities and service charges that it receives, or exercises control over, must be paid to workers in full without deductions by the end of the following month. The Bill would not cover tips paid directly to workers in cash, where those tips are kept by them.

The Bill would also introduce obligations to ensure the fairness of arrangements to distribute tips among workers, either by the employer or an independent tronc arrangement. A new Code of Practice on Tipping will provide guidance on how tips should be distributed, and employers will also need to have a written policy on how tips are dealt with in their business. Workers would have the right to bring a claim against employers who failed to comply with the new rules.

The Bill has passed the Committee Stage and will now progress the Report stage and third reading on 20 January 2023, before moving to the House of Lords. If the Bill passes, it is

expected that the changes will come into force some time in 2024.

What do employers need to do now?

There are no immediate changes for employers given that all of these Bills have some way to go before completing their passage through Parliament. However, it would be sensible to work on the assumption that the Bills will pass into law given that they have the Government's backing. In due course, employers will need to:

- update flexible working policies, practices and training to reflect the changes;
- familiarise themselves with the new carer's leave and neonatal leave frameworks and prepare policies and deliver training to HR and managers;
- consider whether to enhance the right to carer's leave and/or neonatal leave, for example, by permitting longer periods of leave and offering enhanced pay; and
- where relevant, familiarise themselves with the new tipping framework and Code of Practice and prepare a policy on company practices on tipping.

We will keep you updated on the progress of all of these Bills.

Employment Relations (Flexible Working) Bill 2022-23

Carer's Leave Bill 2022-23

Neonatal Care (Leave and Pay) Bill 2022-23

Employment (Allocation of Tips) Bill 2022-23

Brahams Dutt Badrick French LLP are a leading specialist employment law firm based at Bank in the City. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.

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