

BDBF'S 2021 EMPLOYMENT LAW TRACKER

Our tracker highlights new domestic and EU legislation, key Private Members' Bills and Government consultations for legislative reform.

	AREA	WHAT'S THE CHANGE?	WHEN'S IT COMING INTO FORCE?
1.	Immigration rules	<p>Significant change to the rights of EEA nationals to work in the UK</p> <p>Free movement rights for EEA nationals end on 31 December 2020, meaning they will no longer have an automatic right to live and work in the UK. EEA nationals already based in the UK prior to 1 January 2021 may apply for either Settled Status or Pre-Settled Status before 30 June 2021.</p> <p>From 1 January 2021, EEA nationals (and nationals of other countries) wishing to come to the UK to work will need to be sponsored by a UK employer under the new points-based based immigration system. In order to sponsor a worker, the employer must hold a licence issued by the Home Office. Workers must meet salary and skills thresholds in order to qualify for sponsorship. Further guidance on the points-based immigration system is available here.</p>	1 January 2021
2.	Furlough scheme	<p>New phase of the furlough scheme</p> <p>The current phase of the Coronavirus Job Retention Scheme (aka furlough) started running on 1 November 2020 and finishes on 31 January 2021. Under this phase of the furlough scheme, employers do not have to contribute towards the wages of furloughed employees for any unworked hours and may claim a grant of 80% of the employee's pay, capped at £2,500 per month.</p> <p>The Government has indicated that it will review the furlough scheme in January and that the fourth phase of the scheme will run between 1 February 2021 and 31 March 2021. The rules governing the fourth phase of the scheme have yet to be published, but it is widely expected that the Government will reduce their contribution to furloughed employees' wages and require</p>	1 February 2021

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		employers to make a contribution. You can read our detailed guide to the scheme here .	
3.	National minimum wage	<p>Changes to the national minimum wage age threshold and rates increase</p> <p>The minimum age threshold for entitlement to the National Living Wage will decrease from 25 to 23 years of age. In addition, the hourly rates will increase as follows:</p> <ul style="list-style-type: none"> • National Living Wage (age 23+): £8.91. • Standard adult rate (age 21+): £8.36. • Development rate (age 18+): £6.56. • Youth rate (age 16+): £4.62. • Apprentice rate: £4.30. • Accommodation offset (max. daily deduction): £8.36. 	1 April 2021
4.	Statutory pay	<p>Increase to statutory payments</p> <p>It is expected that the statutory payments will increase as follows:</p> <ul style="list-style-type: none"> • Statutory Sick Pay: £96.35 per week (up from £95.85). • Statutory Maternity Pay, Maternity Allowance, Statutory Paternity Pay, Statutory Adoption Pay, Statutory Shared Parental Pay: £151.97 per week (up from £151.20). 	4 April 2021 (TBC)
5.	Off-payroll working (IR35)	<p>Changes to the IR35 rules in the private sector</p> <p>The way in which the IR35 rules operate in the private sector will change. These reforms will see contractors lose the ability to determine their own tax status and place this burden on those who engage them. Large and medium-</p>	<p>6 April 2021</p> <p>Separate regulations allowing for the recovery of PAYE and NICs debts arising under these new rules will</p>

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		<p>sized businesses in the private sector that engage independent contractors via an intermediary (usually a personal service company) will become responsible for assessing whether the IR35 rules apply. Once the business has made its assessment it must notify certain parties of its decision and provide them with the opportunity to challenge the assessment. Where the business contracts with the intermediary (i.e. it is the fee payer), it will also become responsible for deducting income tax and NICs and paying employer's NICs. These reforms were due to come into force on 6 April 2020 but were deferred in the light of the coronavirus pandemic. You can read our detailed note on the new regime here.</p>	<p>come into force on 6 April 2021 and 1 April 2021 respectively.</p>
6.	Termination payments	<p>Changes to the PENP calculation rules</p> <p>The Government has published draft legislation which will amend the formula for calculating post-employment notice pay (PENP) to avoid unfair outcomes where an employee's pay period is defined in months, but the contractual notice period is expressed in weeks. The new rules will also introduce changes to ensure that non-residents who receive PENP are taxed fairly.</p> <p>The changes will apply where the termination payment is received on or after 6 April 2021.</p>	6 April 2021
7.	Whistleblowing	<p>New EU directive on whistleblowing</p> <p>This Directive introduces measures designed to protect those reporting certain breaches of EU law. The protection extends to employees, workers and other categories of individual such as contractors, shareholders, job applicants and former employees. The Directive requires employers with 50 or more employees to have internal whistleblowing procedures which offer a range of reporting mechanisms and also highlight that reports can be made externally. Employers will be required to provide feedback to the whistleblower about</p>	<p>EU Member States have until 17 December 2021 to transpose the Directive into national law. Whether the UK will need to do so is yet to be determined.</p>

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		<p>their internal investigation. There are also measures to protect whistleblowers from retaliation from the employer and colleagues.</p> <p>It is not yet clear whether the UK will be obliged to introduce implementing legislation. This will depend on the terms of any post-Brexit relationship agreed between the UK and the EU.</p>	
8.	Working conditions	<p>New EU Directive on transparent and predictable working conditions</p> <p>This Directive introduces measures designed to protect vulnerable workers. The measures include:</p> <ul style="list-style-type: none"> • giving workers the right to receive a written statement of information concerning their working conditions from Day 1 of their engagement (including particular information where the work pattern is unpredictable); • giving workers the right to request more predictable and secure working conditions after 6 months; • banning probationary periods of more than 6 months save in exceptional circumstances; and • banning exclusivity requirements, save in limited circumstances; <p>It is not yet clear whether the UK will be obliged to introduce implementing legislation. This will depend on the terms of the post-Brexit relationship agreed between the UK and the EU.</p> <p>If so obliged, the UK will already be partially compliant given that the right for workers to receive a Day 1 written statement of particulars of employment came into force on 6 April 2020. Further, the Queen's Speech delivered in 2019 also outlined plans to introduce a new Employment Bill which would include a right for all workers to request "a more predictable contract". Also, the</p>	<p>EU Member States have until 1 August 2022 to transpose the Directive into national law. Whether the UK will need to do this is yet to be determined.</p> <p>The Employment Bill has yet to be published.</p>

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		Government is consulting on banning exclusivity clauses (see 18 below).	
9.	Family-friendly	<p>New EU Directive on work-life balance for parents and carers</p> <p>This Directive includes measures designed to assist working parents and carers. The measures include:</p> <ul style="list-style-type: none"> • giving fathers / co-parents a Day 1 right to take at least 10 working days' paternity leave and, after 6 months' service, to receive pay for such leave; • introducing a right to 2 months' paid parental leave per parent, which workers can take flexibly; • introducing a right to 1 week's unpaid carer's leave; and • extending the right to request flexible working to all working parents of children up to 8 years old and to all carers. <p>It is not yet clear whether the UK will be obliged to introduce implementing legislation. This will depend on the terms of the post-Brexit relationship agreed between the UK and the EU (if any).</p> <p>If so obliged, the UK will be substantially compliant given that it already has laws providing for paid paternity leave, shared parental leave and flexible working requests for all. However, some minor changes to these rights would be needed, and a right to carer's leave would have to be introduced. The Government has indicated that it intends to introduce a right to carer's leave (see 16 below).</p>	EU Member States have until 1 August 2022 to transpose the Directive into national law. Whether the UK will need to do this is yet to be determined.
10.	Equal pay and pay transparency	<p>Private Members' Bill creating new equal pay rights and extending pay reporting obligations</p> <p>The Equal Pay (Information and Claims) Bill 2019-21 would introduce a right for employees to know what their colleagues are paid and would expand gender</p>	The second reading of the Bill is scheduled for 15 January 2021

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		<p>pay gap reporting to employers with 100 or more employees. It would also introduce ethnicity pay reporting for employers at the same threshold. You can read our detailed note on the Bill here.</p> <p>The Government consulted about proposals to introduce ethnicity pay reporting in 2018. However, it did not respond to that consultation and has not taken any further steps to introduce legislation.</p>	
11.	Whistleblowing	<p>Two Private Members Bills aimed at strengthening protection for whistleblowers</p> <p>The Public Interest Disclosure (Protection) Bill 2019-21 aims to protect whistleblowers and create criminal offences relating to the mistreatment of whistleblowers and the mishandling of whistleblowing cases. It would also create an independent Whistleblowing Commission.</p> <p>The Office of the Whistleblower Bill 2019-21 makes provision for the creation of an Office of the Whistleblower which would have various powers including to:</p> <ul style="list-style-type: none"> • act as a point of contact for individuals who wish to blow the whistle; • form and maintain a panel of accredited legal firms and advisory bodies to advise and support whistleblowers; • maintain a fund to support whistleblowers; and • provide financial redress to individuals whose disclosure is deemed by the Office to have harmed their employment, reputation or career. 	<p>The second reading of the Public Interest Disclosure (Protection) Bill 2019-21 is scheduled for 26 February 2021.</p> <p>The second reading of the Office of the Whistleblower Bill 2019-21 has yet to be scheduled.</p>
12.	Pregnancy and maternity	<p>Private Members' Bill and separate consultation on new rules to prohibit redundancy during pregnancy and for 6 months after the return from maternity leave</p> <p>The Pregnancy and Maternity (Redundancy) Protection Bill 2019-21 would</p>	<p>The second reading of the Bill is scheduled for 12 March 2021.</p> <p>The consultation response stated that legislation would be introduced</p>

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		<p>prohibit redundancy during pregnancy and maternity leave and for the 6 months after the end of the pregnancy or maternity leave save in certain circumstances.</p> <p>The Queen's Speech delivered in 2019 also outlined plans for a new Employment Bill which would provide essentially the same protection envisaged by this Bill. The Government has already consulted on this proposal. In its response to the consultation the Government indicated that the return to work protection would also apply to those returning from adoption leave and shared parental leave (although the protected period for shared parental leave may be different).</p>	when Parliamentary time allowed.
13.	Discrimination and harassment	<p>Consultation on new restrictions on the use of confidentiality clauses in situations of workplace harassment or discrimination</p> <p>The Government consulted on various proposals to prevent the misuse of confidentiality clauses in cases of workplace harassment or discrimination. A response to the consultation was published in October 2019 and the Government committed to introduce legislation that would:</p> <ul style="list-style-type: none"> • ensure that confidentiality clauses did not prevent an individual disclosing allegations of harassment or discrimination to the police, regulated health and care professionals or legal professionals; • ensure that the limitations of a confidentiality clause were made clear to those signing them; • improve independent legal advice available to an individual when signing a settlement agreement; and • put in place new enforcement measures for confidentiality clauses that do not comply with legal requirements. • 	The consultation response stated that legislation would be introduced when Parliamentary time allowed.

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14.	Family-friendly	<p>Consultations on reforms to family leave rights</p> <p>The Queen's Speech delivered in 2019 outlined plans for a new Employment Bill which would include various reforms to family leave rights. The Government has consulted on various proposals to reform family leave rights in the following ways:</p> <ul style="list-style-type: none"> • to reform the system of parental leave and pay; • to introduce a new right for parents to take one week's leave for each week that their baby is in neonatal care and, if eligible, receive statutory pay; and • to publish family leave and pay policies (and flexible working policies – see 15 below). <p>A response to the neonatal leave consultation was published on 16 March 2020 and confirmed that the Government will legislate to introduce the right to neonatal leave.</p>	<p>The parental leave and pay consultation closed on 29 November 2019. A response has yet to be published.</p> <p>The neonatal leave legislation has yet to be published.</p> <p>The publication of family leave/flexible working policies consultation closed on 11 October 2019. A response has yet to be published.</p>
15.	Flexible working	<p>Consultations on default flexible working options for all job roles and publication for flexible working policies</p> <p>The Queen's Speech delivered in 2019 outlined plans for a new Employment Bill which would make flexible working available for all job roles the default, save where an employer has a good reason not to allow this.</p> <p>Separately, the Government has consulted on proposals to require employers to publish their flexible working policies (and family leave and pay policies – see 14 above).</p>	<p>The Government has committed to consult on the flexible working for all roles proposal before it is introduced. The consultation has not yet been published.</p> <p>The publication of family leave/flexible working policies consultation closed on 11 October 2019. A response has yet to be published.</p>

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16.	Carers' rights	<p>Consultation on new right to carers' leave</p> <p>The Queen's Speech delivered in 2019 outlined plans for a new Employment Bill which would introduce a new right for workers with caring responsibilities to take one week's unpaid leave. This new leave would supplement other forms of leave such as unpaid parental leave or unpaid time off for dependant emergencies.</p>	<p>The Government's consultation on the proposals closed on 8 June 2020. A response has yet to be published.</p>
17.	Restrictive covenants	<p>Consultation on restricting the use of non-compete clauses</p> <p>The Government has launched a consultation seeking views on proposals to restrict the use of non-compete restrictions in the employment context. The proposals are either to make non-compete clauses unenforceable altogether or to make them enforceable only when the employer provides compensation during the term of the clause. Views are also sought on whether this could be complemented by additional transparency measures and statutory limits on the length of non-compete clauses.</p> <p>As recognised experts in the field of employee competition, BDBF will be providing input into the consultation. If you would like us to include your views too, then please contact Tom McLaughlin who specialises in this area.</p>	<p>The consultation closes on 26 February 2021.</p>
18.	Employment contracts	<p>Consultation on banning exclusivity clauses in employment contracts</p> <p>The Government has launched a consultation on extending the ban on exclusivity clauses in employment contracts to prevent employers from restricting low-paid employees (i.e. those earning below £120 per week) from working for another employer.</p>	<p>The consultation closes on 26 February 2021.</p>