

**BDBF'S 2021 EMPLOYMENT LAW TRACKER - AUGUST 2021 UPDATE**

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.	<b>Furlough scheme</b>	<p><b>Closure of the furlough scheme</b></p> <p>The current phase of the Coronavirus Job Retention Scheme (aka furlough) began on 1 May 2021 and finishes on 30 September 2021, when the entire scheme will close. When the scheme ends, furloughed staff should either return to work or be made redundant.</p> <p>You can read our detailed guide to the scheme <a href="#">here</a>.</p>	30 September 2021
2.	<b>COVID-19</b>	<p><b>Compulsory vaccination of care home workers</b></p> <p>The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021 will impose a legal requirement for care home workers in England to be fully vaccinated against COVID-19, unless they have a medical exemption. The last date for affected workers to get their first dose of the vaccine (so that they are fully vaccinated when the regulations come into force) is 16 September 2021. Guidance on the new rules is available <a href="#">here</a>.</p>	11 November 2021
3.	<b>Whistleblowing</b>	<p><b>New EU directive on whistleblowing</b></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.</p> <p>It is not yet known whether the UK will introduce domestic legislation to align with the Directive.</p>

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		their internal investigation. There are also measures to protect whistleblowers from retaliation from the employer and colleagues.	
4.	<b>Working conditions</b>	<p><b>New EU Directive on transparent and predictable working conditions</b></p> <p>This Directive introduces measures designed to protect vulnerable workers. The measures include:</p> <ul style="list-style-type: none"> <li>• 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);</li> <li>• giving workers the right to request more predictable and secure working conditions after six months;</li> <li>• banning probationary periods of more than six months save in exceptional circumstances; and</li> <li>• banning exclusivity requirements, save in limited circumstances;</li> </ul> <p>It is not yet known whether the UK will introduce domestic legislation to align with the Directive. However, UK law is already partially compliant with the Directive. 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 outlined plans to introduce a new Employment Bill which would include a right for all workers to request "a more predictable contract". Also, the Government is consulting on banning exclusivity clauses (see 19 below).</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>It is not yet known whether the UK will introduce domestic legislation to align with the Directive.</p> <p>The Employment Bill is yet to be published.</p>
5.	<b>Family-friendly</b>	<p><b>New EU Directive on work-life balance for parents and carers</b></p> <p>This Directive includes measures designed to assist working parents and carers.</p>	<p>EU Member States have until 1 August 2022 to transpose the Directive into national law.</p>

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		<p>The measures include:</p> <ul style="list-style-type: none"> <li>• giving fathers / co-parents a Day 1 right to take at least ten working days' paternity leave and, after six months' service, to receive pay for such leave;</li> <li>• introducing a right to two months' paid parental leave per parent, which workers can take flexibly;</li> <li>• introducing a right to one week's unpaid carer's leave; and</li> <li>• extending the right to request flexible working to all working parents of children up to eight years old and to all carers.</li> </ul> <p>It is not yet known whether the UK will introduce domestic legislation to align with the Directive. However, UK law is already substantially compliant with the Directive. We already have 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 17 below).</p>	<p>It is not yet known whether the UK will introduce domestic legislation to align with the Directive.</p>
6.	<b>Whistleblowing</b>	<p><b>Private Members' Bill aimed at strengthening protection for whistleblowers</b></p> <p>The Office of the Whistleblower Bill 2021-22 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"> <li>• act as a point of contact for individuals who wish to blow the whistle;</li> <li>• form and maintain a panel of accredited legal firms and advisory bodies to advise and support whistleblowers;</li> <li>• maintain a fund to support whistleblowers; and</li> <li>• provide financial redress to individuals whose disclosure is deemed by the Office to have harmed their employment, reputation or career.</li> </ul>	<p>The Bill has had its first and second readings in the House of Lords and will now move to committee stage.</p>

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7.	<b>Dismissal and re-engagement</b>	<p><b>Private Members' Bill aimed at regulating dismissal and re-engagement</b></p> <p>The Employment and Trade Union Rights (Dismissal and Re-engagement) Bill 2021-22 would amend the law relating to workplace information and consultation, employment protection and trade union rights to provide safeguards for workers against dismissal and re-engagement on inferior terms and conditions.</p>	The second reading of the Bill is scheduled for 22 October 2021.
8.	<b>Bereavement leave and pay</b>	<p><b>Private Members' Bill aimed at introducing a right to bereavement leave and pay</b></p> <p>The Bereavement (Leave and Pay) Bill 2021-22 would introduce a statutory right to leave and pay for employees of whom a close family member has died.</p>	The second reading of the Bill is scheduled for 29 October 2021.
9.	<b>Paternity leave</b>	<p><b>Private Members' Bill aimed at expanding paternity leave and pay rights</b></p> <p>The Paternity (Leave and Pay) Bill 2021-22 would extend the eligibility to paternity leave and pay and make provision for more flexibility in the timing of, and notice period for, paternity leave.</p>	The second reading of the Bill is scheduled for 29 October 2021.
10.	<b>Flexible working</b>	<p><b>Private Members' Bill aimed at expanding flexible working rights</b></p> <p>The Flexible Working Bill 2021-22 would give workers the right to flexible working by default from Day 1 of employment, save in exceptional circumstances. Employers would be required to offer flexible working arrangements in employment contracts and advertise the level of flexibility in job advertisements.</p> <p>Separately, the Government has committed to consult on making flexible working a Day 1 employment right and available for all job roles, save where an</p>	The second reading of the Bill is scheduled for 19 November 2021.

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		employer has a good reason not to allow it (see 16 below).	
11.	<b>Pregnancy and maternity</b>	<p><b>Private Members' Bill and separate consultation on new rules to prohibit redundancy during pregnancy and for six months after the return from maternity leave</b></p> <p>The Pregnancy and Maternity (Redundancy) Protection Bill 2021-22 would prohibit redundancy during pregnancy and maternity leave and for the six months after the end of the pregnancy or maternity leave save in certain circumstances.</p> <p>Separately, the Queen's Speech delivered in 2019 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>	<p>The second reading of the Bill is scheduled for 3 December 2021.</p> <p>The consultation response stated that legislation would be introduced when Parliamentary time allowed.</p>
12.	<b>Pregnancy loss</b>	<p><b>Private Members' Bill aimed at introducing right to miscarriage leave and pay</b></p> <p>The Miscarriage Leave Bill 2021-22 would introduce a right to paid leave for people who have experienced miscarriage.</p>	<p>The second reading of the Bill is scheduled for 3 December 2021.</p>
13.	<b>Discrimination and harassment</b>	<p><b>Consultation on new restrictions on the use of confidentiality clauses in situations of workplace harassment or discrimination</b></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>	<p>The consultation response stated that legislation would be introduced when Parliamentary time allowed.</p>

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		<ul style="list-style-type: none"> <li>ensure that confidentiality clauses do not prevent individuals disclosing allegations of harassment or discrimination to the police, regulated health and care professionals or legal professionals;</li> <li>ensure that the limitations of a confidentiality clause were made clear to those signing them;</li> <li>improve independent legal advice available to an individual when signing a settlement agreement; and</li> <li>put in place new enforcement measures for confidentiality clauses that do not comply with legal requirements.</li> </ul>	
14.	<b>Discrimination and harassment</b>	<p><b>Consultation on sexual harassment at work</b></p> <p>The Government consulted on various proposals to prevent sexual harassment in the workplace. A response to the consultation was published July 2021 and the Government committed to introduce legislation that would:</p> <ul style="list-style-type: none"> <li>impose a legal duty on employers to take proactive steps to prevent sexual harassment in the workplace; and</li> <li>make employers liable for third party harassment of their workers in certain circumstances.</li> </ul> <p>The Government also committed to looking at whether the time limit for discrimination claims should be extended from three months to six months.</p>	The consultation response stated that legislation would be introduced when Parliamentary time allowed.
15.	<b>Family-friendly</b>	<p><b>Consultations on reforms to family leave rights</b></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</p>	The parental leave and pay consultation closed on 29 November 2019. A response has yet to be published.

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		<p>following ways:</p> <ul style="list-style-type: none"> <li>• to reform the system of parental leave and pay;</li> <li>• 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</li> <li>• to publish family leave and pay policies (and flexible working policies).</li> </ul> <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 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>
16.	<b>Flexible working</b>	<p><b>Consultations on default flexible working options for all job roles and publication for flexible working policies</b></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.</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 flexible working policies consultation closed on 11 October 2019. A response has yet to be published.</p>
17.	<b>Carers' rights</b>	<p><b>Consultation on new right to carers' leave</b></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>

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18.	<b>Restrictive covenants</b>	<p><b>Consultation on restricting the use of non-compete clauses</b></p> <p>The Government consulted on proposals to restrict the use of non-compete restrictions in the employment context. The proposals were 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>	The consultation closed on 26 February 2021. A response has yet to be published.
19.	<b>Employment contracts</b>	<p><b>Consultation on banning exclusivity clauses in employment contracts</b></p> <p>The Government consulted 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>	The consultation closed on 26 February 2021. A response has yet to be published.

If you would like further information, or to discuss how to prepare for any of these changes, please contact Amanda Steadman ([amandasteadman@bdbf.co.uk](mailto:amandasteadman@bdbf.co.uk)) or your usual BDBF contact.