

# WHAT DO EMPLOYERS NEED TO KNOW ABOUT IN 2022?

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*Thank you for joining  
The webinar will begin shortly*



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# WHAT DO EMPLOYERS NEED TO KNOW ABOUT IN 2022?

Lunchtime webinar • Tuesday 25th January 2022



**2022 promises to be yet another busy year for employers. Our lunchtime webinar will bring you up to speed on the key developments for employers to look out for this year. We will cover the following areas:**

- Managing hybrid and flexible working in 2022 and beyond.
- Diversity, inclusion and the challenge of clashing rights in the workplace.
- Proposals to support menopausal workers and how you can get ahead of the curve.
- Workplace harassment: where things stand and what is going to change.
- Your approach to climate change and why it matters to your workforce.
- A round up of other key changes in the pipeline for 2022.

**Date:** Tuesday 25th January 2022

**Time:** 12.00pm – 12.45pm  
followed by Q&A

**RSVP:** By email to  
[jackierockall@bdbf.co.uk](mailto:jackierockall@bdbf.co.uk)  
by 14th January 2022

Instructions for joining the Zoom webinar will be sent out on Tuesday 18th January 2022

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# Managing hybrid and flexible working in 2022 and beyond



# Implementing hybrid working

## 1. Think it through

- Where, when and how could different roles be done?
- What do different employees need?
- What are the risk areas and how will you deal with them?

## 2. Consult with staff

- Do you want to change contractual terms?
- Is there a statutory requirement to consult?
- Be transparent and build in flexibility to alter the model in future.

## 3. Put it in writing

- Will you have a standalone policy or address within an existing flexible working policy?
- Explain how the model will operate and be managed.
- Outline restrictions and limitations.

# Risks presented by hybrid working



# How is flexible working going to change?

- **Changes under consideration:**

1. Making the right to request a “Day 1” employment right.
2. Changing the eight reasons for refusing a request.
3. Requiring employers to consider alternatives.
4. Allowing multiple requests per year.
5. Changing the period for considering requests.

*Tribunal cases from 2021 have underlined that women still bear the primary burden of childcare and the refusal of flexible working may be discriminatory.*

# **Workplace harassment: where things stand and what is going to change**

# Relying on the “reasonable steps” defence

## Allay (UK) Ltd v Gehlen (EAT)

**Brief and superficial equality and anti-harassment training is unlikely to be effective or have a long “shelf life” - the opposite is true of high quality training**

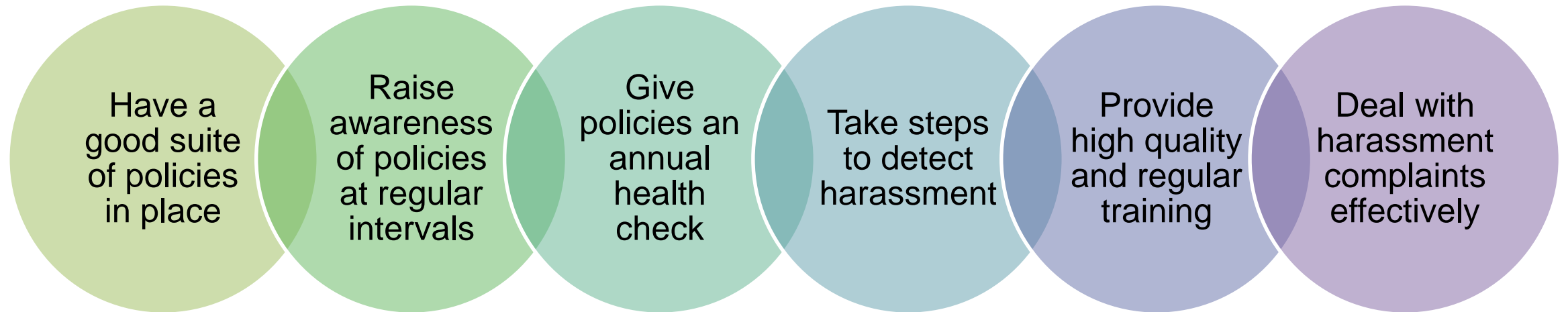
- **What does this mean for the reasonable steps defence?**
  - Where harassment has occurred **after** training has been delivered, then the quality of the training must be scrutinised – was it good enough?
  - Once an employer knows that harassment has occurred, it is on notice that training needs to be refreshed. If it fails to do so, then it won't be able to rely on the reasonable steps defence in future.



# How is harassment law going to change?

Change	Detail
<b>Mandatory duty to protect workers from harassment</b>	<ul style="list-style-type: none"><li>• Employers will be compelled to take steps to protect workers from harassment.</li><li>• New Statutory Code of Practice to set out what employers must do.</li></ul>
<b>Employers to become liable for “third party” harassment</b>	<ul style="list-style-type: none"><li>• Reintroduction of protection from third party harassment.</li><li>• Employers to be liable for harassment of workers by third parties such as contractors or customers.</li></ul>
<b>Increase to the time limit for all discrimination claims (to be confirmed)</b>	<ul style="list-style-type: none"><li>• Commitment to consider extending the time limit for discrimination claims from three months to six months.</li></ul>

# What can you do to limit your exposure?



# **Proposals to support menopausal workers and how you can get ahead of the curve**

# What types of workplace issues do menopausal workers encounter?

- **Common issues:**

- Increased sickness absence
- Dips in performance
- Conduct issues
- Difficulty functioning as usual in the workplace
- Hostility / mockery by colleagues

- Current legal protections are sub-optimal.



# Is the law in this area about to change?

Source	Under consideration
<b>Women and Equalities Committee</b> inquiry into menopause and the workplace	<ul style="list-style-type: none"><li>• Making menopause a standalone protected characteristic.</li><li>• Mandatory workplace menopause policies.</li></ul>
<b>APPG on Menopause</b> inquiry into the impact of the menopause including in the workplace	<ul style="list-style-type: none"><li>• What actions are required in the workplace to improve the position for menopausal workers.</li></ul>
<b>Cross Party Menopause Taskforce</b>	<ul style="list-style-type: none"><li>• The role of workplace policies.</li></ul>

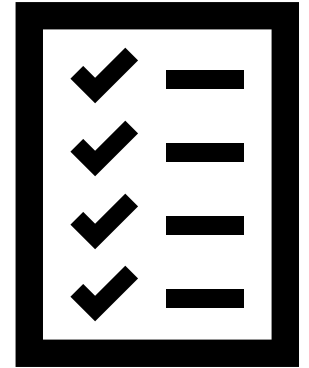
# What steps can employers take to support menopausal workers?

- ✓ Introduce a menopause policy
- ✓ Train line managers and the wider workforce
- ✓ Workplace adjustments
- ✓ Manage sickness / performance / conduct issues carefully (account for impact of menopause)
- ✓ Appoint a “menopause champion”
- ✓ Set up a menopause network
- ✓ Awareness raising (e.g. webinars)
- ✓ Senior leadership buy-in
- ✓ Include in private medical insurance / employee assistance programmes



# What should a menopause policy cover?

1. Define menopause phases and who is affected.
2. Explain the range of symptoms.
3. Encourage open conversations.
4. Specify training for line managers and workforce.
5. Explain approach to risk assessments.
6. Interaction with other policies.
7. Signpost other support / networks.
8. Explain how workers are protected.



# **Diversity, inclusion and the challenge of clashing rights in the workplace**

Ad men win sex discrimination case after sacking in JWT agency's diversity drive

EXCLUSIVE: 'If I'd been a young, black, gay woman I'd have been ok': Two men at ad agency JWT win sex discrimination case after gay female director vowed to 'obliterate' Mad Men reputation of being full of 'white, straight men'

Maya Forstater: Woman wins tribunal appeal over transgender tweets

**SACK FLAK** Two men win sex discrimination case after female boss vowed to "obliterate" firm's image of straight, white males

Two men win sexism case after being sacked in company's drive to plug gender pay gap

Ad men sacked to improve gender pay gap win sex discrimination claim

Maya Forstater: Woman who lost job over transgender views wins appeal against employment tribunal

'Existential challenge' to trans people if employment tribunal ruling overturned

# Reducing the gender pay gap v discriminating against the “pale, stale male”

## **Bayfield and Jenner v Wunderman Thompson (UK) Ltd (ET)**

**Dismissal of male employees to advance female representation and reduce the gender pay gap was discriminatory and unfair**

- **How can employers manage this clash?**
  - Remember that workers are protected from discrimination on grounds of **all** protected characteristics - even those in groups which have not typically faced discrimination.
  - When advancing a new diversity agenda be positive about change but stress this does not come at the expense of your existing workforce.
  - Ensure that action to correct underrepresentation is lawful – consider longer term strategies.

# Gender critical beliefs vs. inclusion of trans workers

## Forstater v CGD Europe Ltd (EAT)

**Gender critical views are protected philosophical beliefs under the Equality Act 2010, even though they may be offensive to trans workers**

### ■ **How can employers manage this clash?**

- Update policies to reflect the fact that those holding gender critical beliefs **and** trans workers are protected from discrimination and harassment.
- Set out the standards of behaviour expected from staff, including the need to treat colleagues with dignity and respect.
- Ensure that such policies are actually communicated and read by staff.
- Deliver equality training to staff, ensuring that it is refreshed at regular intervals.
- Monitor this fast-moving area of the law.

**Your approach to the environment  
and why it matters to your  
workforce**



# Is the environment really an issue for HR?

**83%**

said their employer was not doing enough to combat climate change

**65%**

more likely to work for a firm with strong environmental values

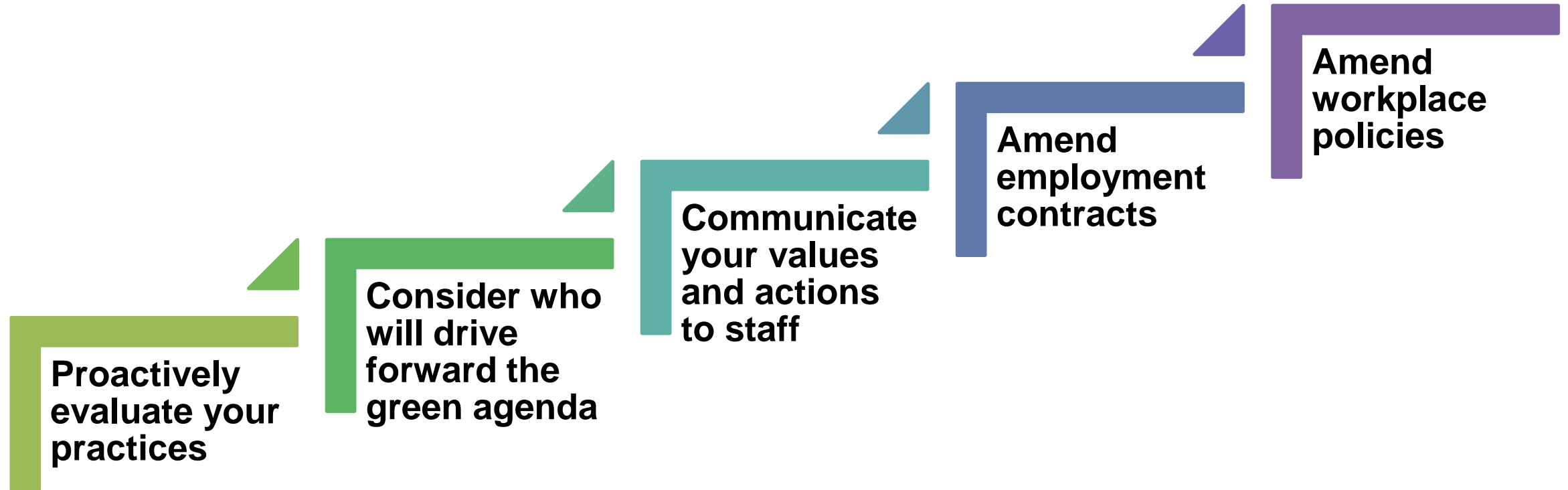
**64%**

would turn down a job offer from a firm with a poor reputation on environmental issues

## Risk of disputes

- Blowing the whistle about damage to the environment and/or dangers to health and safety.
- Blowing the whistle about breaches of legal obligations e.g. “greenwashing” in annual company reports.
- A worker’s belief in climate change is a protected belief under the Equality Act 2010.

# What steps should you consider?



# How to turn your staff handbook green

- **Net zero target:** commitment and target date.
- **Disciplinary rules:** examples of environmental misconduct.
- **Commuting:** incentivise green travel.
- **Holidays:** incentivise sustainable holidays.
- **Flexible working:** consideration of environmental impact.
- **Dress code:** incentivise / provide sustainable clothing.
- **Training:** provide training on environmental issues.
- **Whistleblowing:** commit to investigate all environmental disclosures.



# **A round up of other key changes in the pipeline for 2022**

# Definite changes – awaiting legislation

Change	Detail
<b>Right to carer's leave</b>	<ul style="list-style-type: none"><li>• Day 1 right to one week's unpaid leave to care for / deal with care arrangements for a dependant with a "long-term" care need.</li></ul>
<b>Right to neonatal leave</b>	<ul style="list-style-type: none"><li>• Day 1 right for up to 12 weeks' leave for parents requiring neonatal care (for babies 28 days old or under). Right to pay would be service-related.</li></ul>
<b>Redundancy protection for pregnant employees and family leave returners</b>	<ul style="list-style-type: none"><li>• Pregnant employees and returners from maternity, adoption and shared parental leave to be given priority for suitable alternative vacancies in redundancy situations.</li></ul>
<b>Restrictions on the use of NDAs in situations of workplace harassment or discrimination</b>	<ul style="list-style-type: none"><li>• New rules to ensure individuals may always disclose harassment or discrimination to certain groups and that any NDA is clearly defined and legal advice is given on its scope.</li></ul>

# Possible changes

Change	Detail
<b>Reform of law on non-compete covenants</b>	<ul style="list-style-type: none"><li>• Consultation on restricting or banning the use of non-compete covenants in employment contracts. Awaiting Government response.</li></ul>
<b>Disability workforce reporting</b>	<ul style="list-style-type: none"><li>• Consultation launched on requiring large employers to report on their disabled workforce. Consultation closes on 25 March 2022.</li></ul>
<b>Enhanced protection for whistleblowers</b>	<ul style="list-style-type: none"><li>• Whistleblower protection extended across the EU on 17 December 2021. Possible that Britain will align.</li></ul>



# Our contact details

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