



What do employers need to know about in 2024?

6 February 2024

Speakers



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What are we going to cover today?

Area	Date of change
• Discrimination law	1 January 2024
• Working time and holidays	1 January and 1 April 2024
• Flexible working	6 April 2024 and by 18 September 2024
• Redundancies, pregnancy and family leave	6 April 2024
• Carer's leave	6 April 2024
• Paternity leave	6 April 2024
• TUPE transfers	1 July 2024
• Sexual harassment	By 26 October 2024
• What else is on the horizon?	2024 and beyond

DISCRIMINATION LAW

1 JANUARY 2024

Area	Changes made to the Equality Act 2010
Recruitment	<ul style="list-style-type: none"> Statements about not wanting to recruit people with certain protected characteristics may be discriminatory, even if no active recruitment process underway and no victim.
New mothers	<ul style="list-style-type: none"> Special treatment of women who are on maternity leave is not discriminatory. Unfavourable treatment <u>after</u> return from maternity leave which is related to pregnancy or pregnancy-related illness, may be discriminatory. Workers entitled to contractual but not statutory maternity leave (e.g. LLP members) are protected from pregnancy and maternity discrimination for up to 52 weeks (increased from 2 weeks). Less favourable treatment because of breastfeeding may be discriminatory.
Indirect discrimination	<ul style="list-style-type: none"> A claimant does not need to possess the protected characteristic in question to bring a claim, provided they suffer the same disadvantage as someone who does.
Equal pay	<ul style="list-style-type: none"> Pay comparisons across different employing entities are allowed provided there is a “single source” responsible for setting pay.
Meaning of “disability”	<ul style="list-style-type: none"> Wider meaning of “normal day to day activities” will encompass activities which are infrequent and less common.

What do you need to do?

Make sure your HR teams are familiar with the changes.

No need to amend policies, save that you may wish to address how you will support breastfeeding mothers.

Ensure line managers understand the wide protection for new mothers.

WORKING TIME AND HOLIDAYS

1 JANUARY 2024 AND 1 APRIL 2024

Changes from 1 January 2024

What counts as holiday pay?

- Payments intrinsically linked to the worker's contractual tasks.
- Payments for professional or personal status relating to length of service, seniority or professional qualifications.
- Payments regularly paid to the worker in the last 52 weeks.

Carry-over of annual leave

- New statutory rules governing carry over of leave – **see next slide.**
- No longer possible to carry forward any Covid-related accrued annual leave.

Record-keeping rules

- Clarification that employers do not have to keep a separate record of the daily working hours of workers provided they can otherwise demonstrate compliance with working time rules.

The new carry-over rules

Scenario	What can be carried over?	For how long may it be carried over?
Worker does not take annual leave because the employer denies the right to paid leave:	<ul style="list-style-type: none">• Regulation 13 leave (4 weeks).	<ul style="list-style-type: none">• Until the end of the first full leave year in which the employer is no longer at fault.
Worker unable to take the leave due to absence on sick leave:	<ul style="list-style-type: none">• Regulation 13 leave (4 weeks).• Irregular hours and part year workers may carry over both Regulation 13 and 13A leave (5.6 weeks).	<ul style="list-style-type: none">• 18 months from the end of the holiday year in which the leave arose.
Worker unable to take the leave due to absence on maternity or other family-related leave:	<ul style="list-style-type: none">• Regulation 13 and 13A leave (5.6 weeks).	<ul style="list-style-type: none">• 12 months from the end of the holiday year in which the leave arose.

Changes from 1 April 2024 – irregular hours and part year workers only

Definitions of
irregular hours and
part year workers.

Holiday entitlement:
new “accrue as you
go” system.

Holiday pay: new
“rolled-up holiday
pay” system.

What do you need to do?

Ensure holiday pay includes all necessary components of pay.

If you are differentiating pay for Regulation 13 and 13A leave, explain this in your Staff Handbook.

Ensure you are familiar with new carry over rules and amend your Staff Handbook as necessary.

Assess whether you have irregular hours or part year workers.

If you have IH or PY workers, put in place the “accrue as you go” system for leave entitlement.

Decide if you will allow IH and PY workers to take unaccrued leave (and if you do, have a right to make deductions from pay).

Decide whether you will introduce rolled-up holiday pay for IH and PY workers and consult with staff if necessary.

If you are not going to introduce rolled-up holiday pay, ensure you are calculating holiday pay in line with the new guidance (i.e. a 52-week reference period).

FLEXIBLE WORKING

6 APRIL 2024, END JULY 2024
AND BY 18 SEPTEMBER 2024

Flexible working reforms

6 April 2024

- Right to request flexible working will become a Day 1 employment right.

By end of July 2024

- Employees will not have to explain the possible impact of the change.
- Employees will be able to make two requests in a 12-month period.
- Employers will be required to consult before refusing a request.
- Employers will have two months to complete the process.
- New statutory Acas Code of Practice on Requests for Flexible Working.

New right to request predictable working

Question	Answer
Who can make a request?	<ul style="list-style-type: none">Workers who have worked for a specified minimum amount of time in the last six months before the request (TBC).
When can a request be made?	<ul style="list-style-type: none">Where a worker's work pattern lacks predictability in terms of hours, days or times worked, or the length of the contract.
How should such requests be made?	<ul style="list-style-type: none">In writing, setting out the proposed change and start date. Up to two requests per year (overlaps with similar requests made under the flexible working regime).
What duties will employers have?	<ul style="list-style-type: none">To deal with requests in a reasonable manner within one month. Meet with the employee to discuss the request. Consider alternatives.
Can employers refuse requests?	<ul style="list-style-type: none">Yes, on specified grounds. Should consider offering an appeal.
What if something goes wrong?	<ul style="list-style-type: none">Claims for failing to deal with request properly, detriment and dismissal.

What do you need to do?

Address flexible working options in job ads and interviews.

Revise your Flexible Working Policy to reflect reforms and capture new predictable working request right.

Consider what your consultation process will look like.

Train line managers on the new rules.

Assess whether further resource will be needed to handle an increased number of requests.

Consider strengthening your record-keeping procedures to track number / type of request.

REDUNDANCIES, PREGNANCY AND FAMILY LEAVE

6 APRIL 2024

Pregnant employees

Priority for suitable alternative vacancies in redundancy situations during the “protected period of pregnancy”

Protection begins

- From notification of pregnancy.
- Typically, employers are notified around 12 weeks of pregnancy, but it may be earlier.



Protection ends

- Day statutory maternity leave starts.
- Miscarriage up to 24 weeks: protection ends two weeks after end of pregnancy.
- Stillbirth from 24 weeks onwards: protection ends when statutory maternity leave starts

Maternity leave returners

Priority for suitable alternative vacancies in redundancy situations during the “additional protected period”

Protection begins

- Day after maternity leave ends.
- Protection applies even where holiday / parental leave / sick leave taken before actual return to work.



Protection ends

- 18 months after the birth date (if notification has been given).
- 18 months after the first day of the expected week of childbirth (if notification of birth date has not been given).

Jane

**Pregnancy protection
= 4 months**

*Covering months 4 -7
of pregnancy*

**Maternity protection
= 12 months**

*Covering months 8 –
9 of pregnancy and
10 months post-birth*

**Returner protection
= 8 months**

*Remainder of 18
months post-birth*

Sarah

**Pregnancy protection
= 6 months**

*Covering months 4 –
9 of pregnancy*

**Maternity protection
= 12 months**

*Covering 12 months
post-birth*

**Returner protection
= 6 months**

*Remainder of 18
months post-birth*

Huda

**Pregnancy protection
= 6 months**

*Covering months 4 –
9 of pregnancy*

**Maternity protection
period = 3 months**

*Covering 3 months
post-birth*

**Returner protection
= 15 months**

*Remainder of 18
months post-birth*

Adoption and shared parental leave returners

Adoption leave

- **Protection begins:** the day after the adoption leave ends.
- **Protection ends:** 18 months after the adoption placement date (or date the child enters Britain in case of overseas adoptions).

Shared parental leave

- **Protection begins:** the day after a period of six consecutive weeks' SPL ends.
- **Protection ends:** 18 months after the birth date or adoption placement date (or date the child enters Britain in case of overseas adoptions).

What do you need to do?

Update any relevant staff-facing procedures and internal guidelines on redundancies.

Train HR teams and line managers on the new rules.

Consider whether any imminent redundancy exercises will be affected by the reforms.

Consider how to deal with situations where you have multiple protected employees competing for the same alternative role.

Who will have responsibility for calculating the protected periods in each case?

Take care with process as breach risks automatic unfair dismissal and discrimination.

CARER'S LEAVE

6 APRIL 2024

What is the right and who qualifies?

Right

- Day 1 right to take one week's unpaid leave (pro-rated to work pattern) in any 12-month period to "provide or arrange care" for a "dependant" with a "long-term care need".

"Dependant"

- Spouse, civil partner, child or parent of the employee.
- Someone who lives in the same household as the employee (not a boarder, lodger, tenant or employee).
- Someone else who reasonably relies on the employee to provide or arrange care.

"Long-term care need"

- An illness or injury (whether physical or mental) that requires, or is likely to require, at least three months of care.
- A disability under the Equality Act 2010.
- Care needs relating old age (although "old age" is not defined).

How will it work?

Take as a single
block

OR

discontinuous
blocks of not less
than half a day.

Employee must
give requisite
notice but not
obliged to supply
evidence.

Employer may
postpone if leave
would disrupt
business – but
must give notice
and permit leave
at another time.

Right to return
to the job they
were employed
in immediately
before the leave.

Protected from
detriment and
dismissal
because of
carer's leave.

What do you need to do?

Prepare a Carer's Leave Policy.

Train HR teams and line managers on the new rules.

Consider whether you will require written notice and whether you will relax the amount of notice to be given.

Consider whether you will enhance the amount of leave available.

Consider whether you will offer paid leave.

Consider whether you will offer equivalent rights to non-employees.

PATERNITY LEAVE

6 APRIL 2024

What is changing?

Area	Current position	New position
How paternity leave may be taken:	<ul style="list-style-type: none">• Single block of either 1 week or 2 consecutive weeks.	<ul style="list-style-type: none">• Single block of either 1 week or 2 consecutive weeks. OR• Two separate blocks of 1 week.
When paternity leave may be taken:	<ul style="list-style-type: none">• Within 56 days of birth or adoption.	<ul style="list-style-type: none">• Within 52 weeks of birth or adoption.
The notices the employee needs to give and when they need to give them:	<ul style="list-style-type: none">• Notice of entitlement AND chosen dates = 15 weeks before expected week of childbirth (or within 7 days of adoption match notification).	<ul style="list-style-type: none">• Notice of entitlement = 15 weeks before expected week of childbirth (or within 7 days of adoption match notification).• Chosen dates = 4 weeks before leave starts (or within 7 days of adoption match notification).

What do you need to do?

Update your Paternity Leave Policy to reflect the new rules.

Update the HR forms used to support Paternity Leave – amend Entitlement Notice and create a new Period of Leave Notice.

Notify managers that employees will have the right to take two separate blocks of leave.

TUPE TRANSFERS

1 JULY 2024

TUPE informing and consulting

Current position

- Employers must inform and consult with representatives of affected employees
- Micro employers may inform and consult with affected employees directly

For transfers on or after 1 July 2024

- The micro-employer exemption will be extended to employers with:
 - ✓ up to 49 employees; or
 - ✓ any number of employees where a transfer of up to nine employees is proposed

What do you need to do?

- If you have trade union / standing employee representatives in place – nothing!
- If you do **not** have representatives in place – nothing until you are in a TUPE transfer situation when you would need to decide whether you wish to elect representatives **OR** inform and consult directly

SEXUAL HARASSMENT

BY 26 OCTOBER 2024

The new duty to prevent sexual harassment

Current position:

- **Optional** reasonable steps defence available if you have taken all reasonable steps to prevent harassment.

New position (from 26 October 2024 – TBC):

- **Optional** reasonable steps defence available if you have taken all reasonable steps to prevent harassment.

AND

- **Mandatory** duty to take some reasonable steps to prevent sexual harassment only.
 - Updated EHRC Statutory Code of Practice and Guidance to specify what is expected.
 - Failure to discharge duty may lead to a 25% uplift to compensation in relevant claims and an EHRC investigation / enforcement action which would be in the public domain.

What will you need to do?

Read the updated
EHRC Statutory
Code and Guidance
when published.

Have a good suite of
policies in place.

Be clear on the
standards of
behaviour expected
from staff.

Raise awareness of
policies amongst
staff at regular
intervals.

Review the policies
annually.

Put in place
methods to detect
harassment.

Provide high quality
and regular training
to staff.

Deal with sexual
harassment
complaints
effectively.

WHAT ELSE IS ON THE HORIZON?

Neonatal Leave and pay

- Day 1 right to leave and pay for parents of babies requiring neonatal care.
- Expected in April 2025.

Limiting use of non-compete covenants

- Proposal to limit length of non-compete restrictions in employment contracts to three months.
- No draft legislation or implementation date published.

What would a Labour Government do?

- Green Paper sets out numerous employment law proposals including: introduction of a single worker status; making unfair dismissal a Day 1 right; lifting the compensation caps on employment claims; extending time limits for employment claims; new duty to prevent all harassment; protection from third party harassment; more pay transparency; better family leave rights; making it unlawful to dismiss a woman for six months after return from maternity leave; introducing a right to disconnect and much, much more!

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