



Employment Law Changes expected in 2023

This year will most likely see a number of changes to UK employment laws which all employers need to be aware of and plan for.

The Retained EU Law (Revocation and Reform) Bill

Following the UK's departure from the European Union this Bill if passed means all retained EU law must be transferred into UK law by 31 December 2023 or it will stop being law in the UK. Observers are concerned that this could mean the loss of a number of important employment rights for UK workers, which includes the Working Time Regulations 1998, the Transfer of Undertakings (Protection of Employment) Regulations 2006, TUPE) and Agency Worker Regulations.

The Government can choose to extend this deadline to 23 June 2026, but at the moment there is little indication as to which way it will proceed.

Pregnancy and Family Leave Bill 2022-23

If this Bill is passed, the Government will be able to introduce new regulations to provide more protection for women available on maternity leave which gives them the same cover they currently have during pregnancy for a six-month period after they return to work.

There will also be enhanced protections for employees who are taking adoption or shared paternal leave. This Private Members Bill is currently at the report stage and it is expected to be passed.

Amended Equality Act 2010 Bill 2022-23

This is also a Private Members Bill which if passed means employers have an obligation to take reasonable steps to prevent employees from being harassed during their employment by third parties which will include customers, clients, suppliers etc. There will also be a new duty for employers to take 'all reasonable steps' to prevent sexual harassment of employees. If employers breach this duty, there will be an increase of up to 25% of compensation awarded for such claims.

Flexible Working Consultation

The Government has published the consultation response and it supports the Employment Relations (Flexible Working) Bill. This includes workers rights to request flexible working from the first day of their employment and removes the current 26 week qualifying period which requires employers to consult with employees before a rejection to such a request is made. It will also allow employees to make two flexible working requests each year and employers must respond to these within a two month period.

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Employment (Allocation of Tips) Bill 2022-23

Also a Private Members Bill and if passed will mean employers have a legal obligation to allocate tips, service charges and gratuities fairly between employees. They will also be required to have and implement a written policy which sets out which tips qualify and which employees get to keep them or if they are to be shared, how that allocation is made. This won't include cash tips given directly to employees and only applies to those which the employer receives directly or has influence over.

Neonatal Care (Leave and Pay) Bill 2022-23

Another Private Members Bill, this legislation if passed will give parents with a child who is receiving or who has received neonatal care the statutory entitlement of a minimum of one week's neonatal care leave, (paid if the employee has at least 26 weeks service), which can be taken up to 68 weeks after the date of the child's birth. This will apply to all employees, regardless of their length of service and will offer protection from dismissal or detriment if they take the leave.

Carer's Leave Bill 2022-23

This Private Members Bill if passed will give the government new powers to regulate an employee's right to carer's leave. It is proposed that employees will be entitled to unpaid carer's leave of at least one week in a 12 month period to enable them to care for a dependent (spouse, civil partner, child or parent) who has long-term care needs. The employee will also be protected from dismissal or detriment if they take the leave which will be available to all employees from their first day of employment.

Each of these Bills are anticipated to receive Royal Assent later this year and secondary legislation required to implement them will follow in 2024. Employers clearly need to start thinking about these provisions and how they can be incorporated into their existing workplace policies.



Employee awarded compensation for boss 'bad joke'

A talented employee who had worked at BT Openreach for several years has been awarded over £20,000 compensation following a deeply insensitive 'joke' made by her boss along with other racially motivated comments.

Ms Alexandre who is originally from the US, said she was left 'deeply distressed' when her manager 'joked' that she could get 'deported' if her visa extension was not granted on time.

Ms Alexandre started to become anxious as the expiry date on her visa grew close. She had asked the manager Mr Warner to raise the issue with senior managers as she was worried the paperwork would not be done in time. It was at this point Mr Warner 'joked' about her being deported.

The same manager also 'shocked Ms Alexandre and a fellow black colleague on another occasion by suggesting there were not many black swimmers 'because of class'. This was part of a conversation during a work trip when Ms Alexandre told colleagues she could not swim and did not like it because of her hair. It was during a dinner conversation that the issue of swimmers and class was raised by Mr Warner.

An employment tribunal ruled that Ms Alexandre was racially harassed by her manager Mr Warner who denied making the comments and claimed he was quoting from a tweet about NFL players, top-level swimmers and underprivileged backgrounds.

Ms Alexandre has been awarded £20,964 compensation and in comments the Judge said the tribunal accepted Ms Alexandre's evidence that she found the 'joke' about deportation deeply distressing and utterly humiliating. The Judge went on to say, "The visa process had already caused her a great deal of stress and anxiety as everything that she had built in the UK hung in the balance."

This is yet another example of where businesses can be let down by individual managers and where better education and training and clear workplace policies are needed to prevent these situations from happening. If you would like to discuss updating your workplace policies and procedures, get in touch with our team today.



Buying a business in administration

What are the pros and cons?

High profile examples of businesses being bought from administration have been in the press recently and Tesco's purchase of the stationary retailer Paperchase is just one. But what are the pros and cons of buying a business from administration?

A business in administration is, most often, under some form of financial difficulty so purchasing such a business is very much a case of buyer beware. This means that a buyer will have responsibility for ensuring they know what they are getting into. To further complicate matters, given the speed of these type of sales there won't be much time for a potential buyer to carry out due diligence.

Once a business is in administration, the administrator's duty is to either rescue the business or achieve the best possible outcome for the business' creditors – which will usually mean selling it as quickly as possible for as much as possible. Because of their role as an agent, administrators will not have any personal liability for the sale, and they are likely to refuse to give any representations or warranties regarding the business or its assets.

The administrators will, however, ask the buyer to give them indemnities against any liabilities which may arise following the sale. Their scope can range to include things such as the assets, employee liabilities, third party claims, and these indemnities could add up to a sizeable amount. TUPE regulations will usually transfer employment contracts to the buyer, and they will be required to inform and consult with them regarding the transfer of employment contracts and any changes to them. If stock is included in the sale, there is a risk that a supplier could have the right to ask for any unpaid goods to be returned to them as part of the administration process.

Other creditors or lenders could have a charge over the business' assets. This can include property, equipment and machinery, but it can also cover goodwill or intellectual property. If this is the case, administrators should be asked to secure the release of such charges before the sale completes.

If a leased property is included in the sale, the administrators can offer to give the buyer a License to Occupy the premises whilst negotiations with the landlord take place. The process of administration prevents the landlord from forfeiting the lease without their permission, but if court action is threatened by the landlord, the administrators will be unlikely to defend it and a buyer could find themselves in a difficult position.

Not least important are any existing debts of the business, as they will be assigned to the buyer. The value of assets such as goodwill and intellectual property can also be diminished by the administration process itself. A buyer will want to be aware of such issues and take them into account in the purchase price.

But the role of a legal advisor would not stop at the due diligence matters outlined above. For example, they would take necessary steps to ensure that the administrator has proper authority to sell the business and its assets, and that the necessary process is followed to offer a buyer as much protection as possible. In recent times, there is an added requirement to consider any links the business may have to restricted countries or persons, so the importance of proper due diligence cannot be overstated.

Clearly there are a number of issues to consider when buying a business from administration, far beyond the opportunity to take over a business for a greatly reduced price. If you would like to discuss a business sale or purchase, get in touch with our team today.

Fire and rehire

Could a new Code protect workers?

Last spring there was an uproar nationally when P&O ferries made mass redundancies and then hired new workers on less favourable terms. This is not an isolated example.

In December 2022, the shopworkers union Usdaw was given the go ahead by the Supreme Court to challenge Tesco on its use of fire and rehire of staff on less favourable terms. Staff at its warehouses in Daventry and Litchfield were dismissed but the retailer offered to rehire them on lower pay. The supermarket says this relates to a promise of 'retained pay' which was put in place in 2007 to help with staff retention and which it now argues was only in place for the duration of the contracts the workers signed. Tesco has phased out this payment which it says was only received by a small number of people.

MPs could have chosen to legislate to prevent this practice, but a Bill tabled failed in the House of Commons as the government has argued that

businesses who are in serious financial difficulties should have the ability to offer staff new jobs on new terms, if the alternative is the closure of the business. There have been calls for a new statutory code of practice, which it's anticipated could be published later this year.

The new code is expected to require businesses to hold 'fair, transparent and meaningful' consultations with their employees in relation to proposed changes to their employment terms.

For businesses that don't comply, the Courts and Employment Tribunals will in the future take into account the code and they will have the ability to increase an award by up to 25% in instances where the code hasn't been followed by the employer.

Ultimately there may be times when employers need to review and alter pay and conditions for staff and the message in the future will be to be open, fair and consult first.

If you would like to discuss your terms of employment, get in touch with our team today.

Quick reference section

Statutory minimum notice periods:

An employer must give at least:

- One week's notice to an employee who has been employed for one month or more, but less than two years.
- One week's notice for each **complete** year of service for those employed for more than two years.
- Once an employee has more than 12 year's service, the notice period does not extend beyond 12 weeks.

National Minimum Wage

	April 22	April 23
Apprentices	£4.81	£5.28
16-17	£4.81	£5.28
18-20	£6.83	£7.49
21-22	£9.18	£10.18
National living wage	£9.50	£10.42

Statutory Sick Pay

Per week	£99.35 (from April 2022)
Per week	£109.40 (from April 2023)

Statutory Shared Parental/Maternity/Paternity/Adoption Pay (basic rate)

£156.66 (from April 2022)
£172.48 (from April 2023)

Statutory Holiday

5.6 weeks for a full time employee. This can include bank and public holidays.

Redundancy Calculation

- 0.5 week's pay for each full year of service when age is less than 22.
- 1 week's pay for each full year of service where age during year is 22 or above, but less than 41.
- 1.5 week's pay for each full year of service where age during year is 41 and over.

Calculation is capped at 20 years. Maximum week's pay is capped under the Statutory Scheme for dismissals after 6th April 2022 at £571.00. A new figure from April 2023 is still awaited.



CONTACT

If you would like any additional information on any of the subjects discussed in this newsletter please do not hesitate to contact us.



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