

Employment Newsletter

March 2023

March Newsletter

The purpose of this newsletter is to make it easier for you and your business to keep up to date with the changes in the law and what you need to be aware of.

Our newsletter aims to provide you with the following information:

- Timeline (outlining key dates which HR Professionals should be aware of); and
- Employment Law updates (including changes to legislation and case law updates).

The aim is to ensure that you are aware of the responsibilities you owe to your employees as breaching these responsibilities can have a severe impact on your business.

After three years of being consumed by the pandemic, we can confirm that this is the first newsletter since 2020 where we have not needed to inform or update you on any restrictions. We hope it stays this way!

With normality resuming, we forecast that there will be more focus on implementing changes previously mentioned in our newsletters. To date a lot of changes have not been implemented with many being placed on hold as a result of the pandemic. We expect this to change in 2023 and beyond.

We hope that you find this newsletter helpful.

Bethan and Lucy

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Should you have any queries
please do not hesitate to contact
us:
employmentlaw@baterlaw.com

TIMELINE 2023

The purpose of the 2023 Timeline is to help keep you updated.

2023 Dates:	What change?
10 January	<p>The government introduced a Bill to Parliament. The bill gives the government power to set minimum service levels for, health, education, transport, fire and rescue services and border security.</p> <p>They government hope not to have to use these powers and that agreements can be reached instead. The purpose of the bill is to ensure reasonable levels of service are delivered during strikes.</p> <p>The bill will <u>apply</u> to England, Wales and Scotland and will make a strike unlawful if a union does not comply when notified which workers are required to work by an employer in these sectors.</p>
12 January	<p>The government has launched a consultation on the calculation of holiday for irregular or zero hours contracts following the decision of Harper Trust v Bazel.</p> <p>The consultation proposes to correct this by including weeks with no pay in the 52-week referencing period. This consultation closed on 9 March 2023.</p>
1 April	<p>National Minimum Wage rate will increase. Please refer to Statutory Rates 2023/24.</p>
3 April	<p>Family friendly pay rates will increase, including Statutory Maternity Pay (SMP), Statutory Adoption Pay (SAP), Shared Parental Pay (ShPP), Statutory Paternity Pay (SPP) and Statutory Parental Bereavement Pay (SPBP). Please refer to Statutory Rates 2023/24.</p>
4 April	<p>Gender Pay Gap Reporting Deadline for private sector employers and voluntary organisations.</p>
6 April	<p>Statutory Sick Pay (SSP) will increase. Please refer to Statutory Rates 2023/24.</p>
8 May	<p>There will be an additional bank holiday on Monday 8 May following King Charles II coronation on Saturday 6 May.</p>
TBC	<p>Retained EU Law (Revocation and Reform) Bill</p> <p>This Bill is currently at its Report Stage in the House of Commons, meaning there is sometime before this Bill gets passed, however, the big question is what will the Bill provide for?</p>

STATUTORY RATES 2023/24

Minimum Living Wage		
Age	April 2022/23	From April 2023/24
23+	£9.50	£10.42
21 – 22	£9.18	£10.18
18 – 20	£6.83	£7.49
16 – 17	£4.81	£5.28
Apprentices <i>(aged under 19 and or aged over 19 in first year of their apprenticeship)</i>	£4.81	£5.28
Accommodation offset limit <i>(maximum daily deduction from NMW)</i>		£9.10
Compensation Limits and Awards		
		Maximum Award
Low Earnings Limit (per week)		£123
Limit on a week's pay		£643
Maximum Basic Award (Unfair Dismissal 'UD')		£19,290
Compensatory Award (UD)		£105,707*
Additional award 26 – 52 weeks' pay (refusal to re-engage)		£16,718 - £33,436
Maximum Redundancy Payment		£19,290
Refusal of the right to be accompanied		Up to 2 weeks' pay
Breach of Contract Claims in a Tribunal		£25,000
Failure to provide written particulars		Up to 4 weeks' pay
Breach of flexible working regulations		8 weeks' pay <small>(Limit on a week's pay)</small>
Failure to inform or consult in respect of a redundancy		90 days' pay (gross)
Failure to inform or consult in respect of a business transfer		13 weeks' pay (gross)
<i>£105,707 or 52 weeks' pay whichever is lower.</i>		

Leave Entitlements		
Right	Max. Period	Payment
Statutory Maternity Leave	52 weeks	See below
Statutory Maternity Pay (SMP)	33 weeks	£172.48 or 90% of normal weekly earnings, whichever is lower
SMP (Higher rate)	6 weeks	90% of normal weekly earnings
SMP (Basic Rate)	33 weeks	£172.48 per week (p/w)
Statutory Paternity Leave	1 or 2 weeks	See below
Statutory Paternity Pay (SPP)	1 or 2 weeks	£172.48 or 90% of normal weekly earnings, whichever is lower
Statutory Adoption Leave	52 weeks	See below
Statutory Adoption Pay ((SAP) Higher Rate)	6 weeks	90% of normal weekly earnings
SAP (Basic Rate)	33 weeks	£172.48 or 90% of normal weekly earnings, whichever is lower
Shared Parental Leave	52 weeks	See below
Shared Parental Pay (ShAPP)	39 weeks*	£172.48 or 90% of normal weekly earnings, whichever is lower
Statutory Parental Bereavement Leave	2 weeks	See below
Statutory Parental Bereavement Pay (SPBP)	2 weeks	£172.48 or 90% of normal weekly earnings, whichever is lower
Parental Leave**	18 weeks	Unpaid
<i>*is dependent on the leave which has been taken by their partner SMP/SAP</i>		
<i>**available to some working parents in addition to SMP, SPP, SAP and ShPP leave can be taken up until a child's 18th birthday.</i>		
Statutory Sick Pay		
SSP	28 weeks*	£109.40
<i>*Following four or more consecutive days absence.</i>		

BE PREPARED FOR 2023

Additional Bank Holiday:

We will be receiving an extra bank holiday on the 8th May 2023 for the King's Coronation. This means in 2023 we will see 9 bank holidays rather than the usual 8 days (if you don't count the 10 we had in 2022!).

But what does this mean for employees and businesses, are employees automatically entitled to the additional bank holiday?

The answer to this is that it will largely depend on the wording of the employee's contract of employment.

We have put together a useful article on our website which details if an employee will be required to work on the additional bank holiday [here](#).

Harper Trust and Calculating Holidays:

This is a landmark case which changes the landscape for calculating holiday for zero-hour workers or those on variable-hour contracts.

The previous calculation that has been used for many years is the 12.07% calculation. However, this landmark case sets out that this is no longer a reliable method.

The Supreme Court held that all workers should be getting 5.6 weeks leave. It doesn't matter how many weeks in the year they work.

Since this ruling the government website have set out that employers can calculate this leave entitlement by:

1. Calculating average days or hours worked each week.
2. This average be based on a representative reference period i.e. 52 weeks or how long they have been employed if less than 52 weeks.

Be aware that the government have carried out a consultation on this calculation and we are awaiting its response. It is therefore subject to change.

Carers Leave Bill

This bill was first introduced on 21 October 2022, it has not come into force yet. The aim of this law is to provide those who care for family members whilst working a statutory right to leave.

The Carers Leave Bill will entitle carers to take 1 week unpaid leave per year in order to support those they care for. It is also intended that this leave will be a day one right, there will be no requirement for them to have worked for their employer for a minimum length of time. There will also be no requirement to provide evidence of how the leave is used or who it will be used for.

An employee who seeks to use this entitlement (when it comes into force), will be protected from dismissal or any detriment as a result of having taken the time off.

At present we have no time frame as to when we expect the bill to come into force but anticipate it will be towards the end of this year. As of 27 March 2023, the House of Lords had completed its second reading of the bill.

Neonatal Care (Leave and Pay) Bill

This has widely talked about for a while. The proposed bill aims to provide parents with additional leave when babies require neonatal care after birth, allowing parents to spend more time providing care to their baby rather than worrying about using up paternity leave and/or maternity leave, and instead focusing on being by their baby's side.

It will allow parents to take up to 12 weeks paid leave, if their baby is admitted into hospital up to the age of 28 days and have a continuous stay in hospital for 7 full days or more. The bill also sets out that this will be a day one right. This will not affect their rights to paternity or maternity leave.

It is assumed that the government will pay parents the same amount as those who take maternity and paternity leave and that this rate will change each April.

Much like Carers leave, we have no time frame as to when we expect the bill to come into force but anticipate it will be towards the end of this year. As of 27 March 2023, the House of Lords had completed its second reading of the bill.

Allocation of Tips Bill

The intention of this bill is to outlaw the withholding of tips, providing employees who work in the hospitality sector with more protection.

The bill intends to create a legal obligation between the employer and the employee, that 100% of tips, gratuities and service charges are allocated to the employee.

How the tips will be distributed has been questioned and it is proposed that the distribution is 'fair' between the employees. The bill aims to introduce a code to set out what 'fair' means and also imposes transparency requirements on the employer, meaning they need to be able to show how tips are distributed and also be able to provide a written record of how tips are dealt with.

Big changes are on the horizon for the hospitality sector! Again, we don't have a definitive date for when this bill will come into force, however, it is likely to come into force towards the end of 2023 or start of 2024.

A second reading of this bill took place on 3 March 2023 and we currently await the outcome of this reading.

Retained EU Law Bill

As of the 28 March 2023, the Retained EU Law (Revocation and Reform) Bill is currently at the Report Stage in the House of Lords, which provides all members of the Lords a further opportunity to review and amend the bill.

The real question is what does this bill look to implement?

All law derived from the EU must either be reviewed and transferred to UK law by the 31 December 2023 or it will be sunsetted (in other words it will stop being law on 1 January 2024).

What does this mean to Employment Law?

If a decision is made not to review and transfer the legislation introduced by the EU, they will in effect vanish and no longer be law. It means that we would no longer be required to comply with the following:

- TUPE (Transfer of Undertakings)
- Working Time Regulations
- Part-Time Workers Regulations
- Agency Workers Regulations
- GDPR
- Privacy and Electronic Regulations

Whilst this may come as a sigh of relief to some employers, we find it highly unlikely that these regulations will not be reviewed and transferred (subject to some change) to UK law.

We anticipate this will come into force towards the end of Spring/Summer 2023.

If you have any queries about any of the decisions that have been made, please do not hesitate to contact us:

employmentlaw@baterlaw.com

2024 AND BEYOND

We anticipate a lot of the changes coming into force over the next few years. Unfortunately, for many of the bills we are unable to provide for timescales as to when they will come into force. We are only able to anticipate when they will be implemented.

It is widely reported that a lot of the proposed bills were put on pause during the pandemic. This could mean a number of changes will be made over the next year or so. Please be reassured that when we know, we will send an update by email.

Worker Protection (Amendment of Equality Act 2010) Bill

We reported on this new statutory code last year.

A bill has been proposed to tackle harassment in the workplace, this bill is called the Worker Protection (Amendment of Equality Act 2010) Bill. The aim is to extend the range of safeguards for employees.

One of the main points is that it aims to reintroduce the duty to protect employees from harassment by third parties. It will also impose new duties on employers to take all reasonable steps to prevent harassment.

This Bill also aims to impose penalties on any employers who are found to be in breach of their duties, by providing an uplift of up to 25% of the compensation award.

As of 27 March 2023, a second reading of the bill is due to take place within the House of Lords. We will keep you updated once we know more about the introduction of this law.

Employment Relations (Flexible Working) Bill

As of 27 March 2023, a second reading of the bill is due to take place within the House of Lords. But what does the bill aim to introduce?

The bill aims to introduce the following:

- Employees will be able to make a flexible working request from day one, as opposed to the current law which only enables employees to make a request after they have been employed for 26 weeks.
- Have the right to make two requests in a 12-month period, compared with the current law which only allows for one request in a 12-month period.
- Employers must respond to requests within 2 months as opposed to 3 months currently.
- The reforms will also ensure that low paid workers who are paid on or below the Lower Earnings Limit will be protected from exclusivity clauses being enforced on them. This will allow those workers to work for multiple employers.

It will be interesting to see whether this Bill progresses with no amendments. The questions businesses are currently concerned with is why is this right become a day one right?

It would mean that an employee who applies for a job and is successful would be able to make a flexible working request on day one, despite the employee being aware of the requirements set out in the job adverts. This could cause issues for employees. However, on the other hand, it will enable those with caring and childcare responsibilities more flexibility and a better opportunity of returning and remaining at the workplace.

We are interested to see how this bill progresses and will keep you updated.

Protection from Redundancy Bill

At present, Regulation 10 of the Maternity and Parental Leave Etc. Regulations 1999, imposes an obligation on employers to offer suitable alternative employment, where a vacancy exists, to a parent who is on maternity leave as soon as their job is at risk of redundancy. The current period of protection from redundancy only applies to the duration of maternity leave, the protection does not extend to an employee once they have returned to work.

The bill proposes to protect the following types of employee from redundancy:

- Expectant employees from the moment they inform their employer of their pregnancy until 18 months after the birth.
- Parents taking adoptions or shared parental leave will be protected while on leave and for a period of 18 months after their return.

As of 28 March 2023, the Protection from Redundancy (Pregnancy and Family Leave) Bill has completed its second reading at the House of Lords meaning it is one step closer to becoming law. However, we do not anticipate this law coming into force until 2024.

Draft Code of Practice on Fire and Re-hire

The government have published a new draft Code of Practice which is open for consultation until April 2023.

Fire and Rehire has come under fire over recent years due to a number of company's using this practice during the pandemic and I'm sure we are all aware of the P&O Ferries scandal (this did not follow a strict "fire and rehire" exercise but seemingly pushed the government to reconsider the implications of this).

The aim of the Code is to protect employees and crack down on employers that use controversial dismissal tactics. Employer's will be required to consult in a fair and transparent way when proposing changes to a contract and aim to prevent employers from using threats of dismissal to pressurise employees into accepting new terms.

The Code will carry more legal weight than the current ACAS guidance, meaning that if the Code is not complied with it could result in a tribunal award being uplifted to 25%.

We anticipate having more updates on the introduction of this Code once the consultation in April has concluded.

If you have any queries about any of these updates, please do not hesitate to contact us:

employmentlaw@baterlaw.com