

# Employment Law Update- February 2024

## RECENT/UPCOMING LEGISLATION

The following came into force on 1 January 2024:

### **The Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023**

- <https://www.gov.uk/government/publications/the-employment-rights-amendment-revocation-and-transitional-provision-regulations-2023>
- Key changes have been made to the Working Time Regulations 1998 and the TUPE regulations, including:
  - Changing how holiday entitlement is to be calculated for part-year and irregular hours workers (under the Working Time Regulations 1998)- **see Holiday Entitlement / Pay below.**
  - Permitting rolled up holiday pay for part-year workers and irregular hours workers- **see Holiday Entitlement / Pay below.**
  - Carry over of leave following sickness absence will be added to the Working Time Regulations (to reflect caselaw on this area).
  - Employers will not be required to keep records of the daily working hours of each worker, including rest time and breaks (as suggested by a previous decision of the ECJ). Employers simply need to create and maintain records which are sufficient to show compliance with the Working Time Regulations.
  - For TUPE transfers on or after 1 July 2024, employers can consult directly with affected employees where a business has fewer than 50 employees and the number of employees being transferred is less than 10. (Currently, only businesses with fewer than 10 employees can consult employees directly.)

### **Holiday Entitlement/Pay**

- <https://www.gov.uk/government/publications/simplifying-holiday-entitlement-and-holiday-pay-calculations/holiday-pay-and-entitlement-reforms-from-1-january-2024>
- The government has introduced a number of changes to the Working Time Regulations in relation to holiday entitlement and pay.
- It is worth reading the guidance in full, but key areas to note are:
  - For holiday years beginning on or after 1 April 2024, holiday entitlement for **irregular hour workers and part-year workers** will be calculated as 12.07% of actual hours worked in a pay period.  
  
NB There is no change in how entitlement is calculated for other workers.
  - For holiday years beginning on or after 1 April 2024, employers can use rolled up holiday pay **for part-year and irregular hours workers only**, provided that the holiday pay is:
    - calculated as 12.07% of the worker's pay;
    - paid at same time as their normal remuneration; and
    - evidenced on the worker's payslip.

NB If your holiday year begins on 1 January, the earliest you could apply these changes is 1 January 2025.

The following will come into force from 6 April 2024:

### **Flexible Working**

- The Employment Relations (Flexible Working) Act 2023 received Royal Assent in July 2023 and will come into force on 6 April 2024. From that date:
  - The right to request flexible working will become a "day one" right (removing the current requirement for employees to have at least 26 weeks' service to make a flexible working request).
  - Employees will no longer have to explain what effect their requested change may have on the employer and how that effect might be dealt with.
  - They will be entitled to make two requests (instead of one) in any 12-month period, and employers will have to respond to a request within two months (reduced from three months).
  - Employers will be required to consult with the employee before rejecting their flexible working request.
- Acas has updated its Code of Practice on flexible working to incorporate the April 2024 changes, and the draft Code is currently awaiting parliamentary approval:

[https://www.acas.org.uk/acas-code-of-practice-on-flexible-working-requests/2024?mc\\_cid=05faee7046&mc\\_eid=a3b5ab2d80](https://www.acas.org.uk/acas-code-of-practice-on-flexible-working-requests/2024?mc_cid=05faee7046&mc_eid=a3b5ab2d80)

If approved, this Code is expected to come into effect in April 2024. Until then, the current Code remains in place.

### **The Protection from Redundancy (Pregnancy and Family Leave) Act 2023**

- <https://www.gov.uk/government/news/government-backs-new-law-to-help-pregnant-women-and-new-parents-stay-in-work>
- Under the current law, employees on maternity leave, shared parental leave or adoption leave have the right to be offered a suitable alternative vacancy, if one is available, before being made redundant, in priority to other potentially redundant employees.
- From 6 April 2024, the priority status will be extended to pregnant employees and those who have recently returned from maternity/adoption and shared parental leave.

### **POTENTIAL FUTURE CHANGES**

#### **Workers' right to request a more predictable contract**

- <https://www.gov.uk/government/news/millions-get-more-power-over-working-hours-thanks-to-new-law>
- The Workers (Predictable Terms and Conditions) Act 2023 received Royal Assent in September 2023 and is likely to come into force in September 2024.
- If a worker's existing working pattern lacks certainty in terms of the hours they work, the times they work or if it is a fixed term contract for less than 12 months, they will be able to make a formal application to change their working pattern to make it more predictable. Once a worker has made their request, their employer will be required to notify them of their decision within one month.

### Dismissal and re-engagement: new statutory code of practice

- On 24 January 2023, the government published the draft Code of Practice on Dismissal and Re-engagement, for consultation:

<https://www.gov.uk/government/consultations/draft-code-of-practice-on-dismissal-and-re-engagement>

- The final version is expected to be published sometime in spring 2024.

### Re-introducing Fees in Employment Tribunal and EAT

- <https://www.lawgazette.co.uk/news/government-resurrects-employment-tribunal-fees/5118582.article>
- The government is proposing to reintroduce fees for employment tribunal claims, nearly seven years after the Supreme Court quashed the previous charging regime as unlawful.
- A £55 issue fee would be payable on bringing a claim to the tribunal, which would remain at £55 where a claim is brought by multiple claimants.
- Each judgment, direction, decision or order appealed to the EAT would attract a £55 fee. No hearing fees are planned.

### Neonatal Care (Leave and Pay) Act 2023

- <https://www.gov.uk/government/news/parents-whose-babies-require-neonatal-care-to-receive-paid-leave-under-new-law-backed-by-government>
- The Act received Royal Assent on 24 May 2023 but the new rights will not come into force until April 2025.
- We await regulations specifying the new rights, but they are likely to include up to 12 weeks' leave and pay (rate to be confirmed) for parents when a baby requires neonatal care, in addition to existing parental leave entitlements.
- Parents who take neonatal leave and pay will also be entitled to return to the same job after their period of absence.

### Miscarriage Leave Bill

- <https://www.tommys.org/about-us/news-views/disappointment-miscarriage-leave-bill-doesnt-have-second-reading-parliament>
- This bill looks to introduce three days of paid leave for people who have experienced baby loss before 24 weeks as, under current legislation, those going through the loss are not entitled to any paid leave.
- The bill has seen its second reading delayed multiple times.

### General Election 2024

- The Labour party may win the next general election which could mean radical changes to employment law: <https://labour.org.uk/wp-content/uploads/2022/10/New-Deal-for-Working-People-Green-Paper.pdf>

***These notes have been prepared for the purpose of articles only. They should not be regarded as a substitute for taking legal advice.***