

Recent developments: Employment

| Area | Comment |
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| EU Retained Law | The Government has announced that it is to remove the “sunset clause” from the Retained EU Law (Revocation and Reform) Bill, which means that EU law will remain binding in the UK unless it is expressly repealed. |
| Reallocation of tips | The Employment (Allocation of Tips) Act 2023 received Royal Assent on 2 May 2023, and is due to come into effect in May 2024. The Act will create a new legal obligation for employers to fairly allocate “qualifying tips” and pay them to workers within a month of the tip being made by the customer. A new Code of Practice will be drafted later this year to guide employers, and there will be a new duty to maintain a record as well. |
| Draft Code of Conduct on Dismissal and Re-engagement | Following the Government’s publication of the draft Code of Practice on Dismissal and Re-engagement, ACAS have responded by noting some “significant concerns”. In particular, ACAS are concerned that the scope of the Code is unclear, that the draft Code is lengthy and complex, and that the order of some of the procedural steps should be reworked. |
| Reasonable Adjustments | ACAS have published some resources for employers and employees on making reasonable adjustments for mental health, including guidance and case studies. In the guidance, ACAS provide examples of actions such as reviewing tasks or deadlines to ensure a reasonable workload, breaking work down into smaller tasks, reviewing responsibilities to reduce those that could cause more stress, agreeing communication methods, and changing a person's workspace to reduce sensory demands. |
| Definition of disability | The Claimant in <i>Morris v Lauren Richards Ltd</i> suffered from anxiety as a result of workplace issues. Her employment was terminated, and she brought claims of disability discrimination. A Tribunal wrongly found that because the Claimant had been dismissed, the cause of her impairment was removed, and her impairment was therefore unlikely to last for at least 12 months are required by the definition of disability. The EAT found that the tribunal should have focused on whether her impairment “could well have” lasted for at least 12 months, and should not have given so much weight to the dismissal as a material factor. |

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| Vento Bands | <p>Claims presented on or after 6 April 2023 will now be subject to the following updated Vento bands:</p> <ul style="list-style-type: none"> • Lower band of £1,100 to £11,200 (covering less serious cases) • Middle band of £11,200 - £33,700 (cases that do not merit an award in the upper band) • Upper band of £33,700 - £56,200 (for the most serious cases) |
| Biometric Residence Permits | <p>As part of the Government's overhaul of the immigration system, Biometric Residence Permits will stop being produced from 1 January 2025. Employees will instead be able to prove their immigration status online, with further details due out in early 2024.</p> |

Current Government Consultations and Policy Papers

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| Retained EU employment law reforms Closing 7 July 2023 | <p>The Government has launched a consultation on the following reforms:</p> <ul style="list-style-type: none"> • Working Time Regulations – changes include merging “normal” and “additional” holiday leave entitlement, allowing for holiday pay to be “rolled-up”, and removing the need to keep records of working hours. • TUPE – there will be no requirement to consult with appointed representatives when transferring fewer than 10 transferees in a business with fewer than 50 employees. <p>It believes that these areas are too onerous on business to be used effectively, or too complex for workers to know, understand and use. These measures were first announced in the policy paper ‘Smarter Regulation to Grow the Economy’, published by the Department for Business and Trade on 10 May 2023.</p> |
| Open Justice: the way forwards Closing 7 September 2023 | <p>The Government has issued a Call for Evidence to gain views on how to “support and strengthen the openness of our court and tribunal services”. In particular, questions are focusing on listings, remote observation and livestreaming, and access to court documents.</p> |

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Immigration

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| Changes to Right to work Checks | <p>The UK government has issued updated guidance on right to work checks, providing statutory excuse against penalties for unknowingly employing illegal workers. The new guidance introduces the Identity Document Validation Technology (IDVT) for digital identity verification and provides clarity on the use of Biometric Residence Permits (BRPs) with an expiry date of 31st December 2024.</p> <p>Temporary adjusted checks due to COVID-19, which facilitated remote checks during lockdown, ended on 30th September 2022. Starting from 1st October 2022, employers must conduct prescribed checks (manual check, IDVT check, or Home Office online check) before an employee's start date, regardless of nationality. Retrospective checks are not required if the adjusted checks were conducted according to the previous guidance.</p> <p>Identity Service Providers (IDSPs) can be used by employers for remote digital checks on British and Irish citizens holding valid passports or passport cards. However, employers remain responsible for the check and must ensure the chosen IDSP follows the prescribed steps for identity verification.</p> <p>Expired British/Irish passports or passport cards cannot be used for IDVT checks. In such cases, employers must perform a manual right to work check following the prescribed procedure to obtain statutory excuse.</p> |
| Sponsorship Licence | <p>Starting from 24 March 2023, requests to replace the Authorising Officer (AO) and/or Key Contact (KC) and add Level 1 Users will be immediately processed on the SMS (system) under certain conditions. To replace the AO or KC, the SMS will update automatically if the postcode of the new AO/KC matches the postcode of the main organisation address or head office mentioned in the license summary. However, replacing the AO requires the sponsor to download and send the Submission Sheet with supporting documents. When adding a Level 1 User, the SMS will update automatically if the postcode of the new user matches the postcode of the legal representative organisation indicated on the license summary. The new Level 1 User will receive a temporary password promptly and be listed as 'Active' on the SMS. If the specified criteria are not met, the requests will follow the standard 18-week processing time, unless the sponsor applies for the £200 post-license priority service, which is currently experiencing delays in acceptance.</p> |
| Certificate of Sponsorship | <p>Immigration Skills Charge: new exemption</p> <ul style="list-style-type: none"> From the 1st January 2023, sponsors hiring individuals coming from a linked EU business for less than 36 months, |

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| | <p>will be exempt from the payment of the Immigration Skills Charge. This should result in them saving up to £3000 per sponsored individual.</p> <p>Work start date</p> <ul style="list-style-type: none"> According to updated guidance from the Home Office, sponsored workers can start their employment in the UK as soon as they receive permission to enter or stay, regardless of whether it's before or after the specified work start date on their Certificate of Sponsorship (CoS). Additionally, sponsors are not required to report a change of start date through the Sponsorship Management System (SMS) unless there is a delay of more than 28 days from the initial CoS start date. |
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Future Developments

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| Strikes (Minimum Service Levels) Bill | Following amends made by the House of Lords, the Strikes (Minimum Service Levels) Bill is due back in the House of Commons on 22 May 2023 for consideration. The Bill proposes to introduce minimum service levels across six sectors, including transport, health, and education, and has been a controversial piece of legislation. |
| The Worker Protection (Amendment of Equality Act 2010) Bill | <p>This Bill would pass additional liabilities to employers insofar that they will become liable for harassment of their employees by clients, customers and other third parties (which will relate to all protected characteristics). The new law would also create a positive duty to prevent sexual harassment of their employees by staff.</p> <p>If passed, this Bill will come into force one year after the Bill is passed.</p> |
| Carer's Leave Bill | The Carer's Leave Bill passed the final stage of Parliament on 19 May 2023 and is now set to become law, coming into force in 2024. The Bill will allow voluntary carers to take up to one week of unpaid leave per year, which will have the same protections from detriment and dismissal as other types of family leave. |
| Redundancy (Pregnancy and Family Leave) Bill | Due to have its third reading in the House of Lords on 19 May 2023, the Redundancy (Pregnancy and Family Leave) Bill also looks set to become law. The Bill would allow for redundancy protections to apply from the point that the employee tells their employer that they are pregnant, to six months following the employee's return from |

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| | maternity, adoption, or shared parental leave. |
| Employment Relations (Flexible Working) Bill | <p>A further bill working its way through the House of Lords is the Employment Relations (Flexible Working) Bill, which if passed would make it easier for employees to request flexible working. Among the amends, it would:</p> <ul style="list-style-type: none"> • Require employers to consult with employees before rejecting a request • Allow employees to make two requests per 12 month period, rather than one • Reduce the response time for employers from three months to two • Remove the requirement on employees to explain the effect of the request on the business |
| Restrictive Covenants | <p>In its "<i>Smarter Regulation to Grow the Economy</i>" policy paper, the Government has signalled its intention to reform non-compete clauses in employment contracts. In particular, the proposals would limit the length of a non-compete clause to three months, which the Government hopes will give employees greater freedom to switch roles and employers access to a wider talent pool. The changes will be made "<i>when parliamentary time allows</i>".</p> |
| Equality Act | <p>The Equality and Human Rights Commission have given their advice on whether to change the definition of "sex" in the Equality Act 2010 to mean biological sex. The EHRC advised that such a change could bring clarity to some areas of law, such as pregnancy and maternity protections and freedom of association, but would have an ambiguous or potentially disadvantageous effect on other areas such as equal pay provisions and discrimination law. If the Government do amend the definition, the EHRC has advised it do so only after detailed legal and policy analysis has taken place.</p> |

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