HR Hub - Employment Update – overview of 2024

Section 1 – Legislation

1. Holiday and Holiday pay

On 1 January 2024, the Working Time Regulations were amended to reform holiday entitlement and holiday pay calculations. The changes include:

- Introducing an accrual method of calculating holiday entitlement for workers with irregular hours and part year workers.
- Introducing rolled up holiday pay.
- Defining "normal remuneration".

How statutory holiday entitlement is accrued

Statutory holiday entitlement for part year and irregular hours workers is (for leave years starting on or after 1 April 2024) calculated as 12.07% of actual hours worked in a pay period.

As the change applies to leave years starting on or after 1 April, for employers using a calendar year as their holiday year, the change will be effective from 1 January 2025.

Rolled up holiday pay

Prior to the new rules coming into force, rolled-up holiday pay was not permitted, however for leave years starting from 1 April 2024, employers now have this option for irregular hour and part year workers. This provides an additional method for employers to calculate holiday pay by consolidating the basic pay and accrued holiday pay into one payment. The holiday pay is still calculated at a rate of 12.07% (unless contractually entitled to a higher rate) and will be calculated against the hours worked in the same pay period and itemised separately on the worker's payslip.

Employers can instead choose to just pay holiday pay when holiday is taken, calculated at the rate of a week's pay for each week's holiday. A week's pay will be the average amount of weekly pay over the previous 52 weeks. Any weeks during which no work was performed, or any weeks on sick leave or family leave, are excluded from the calculation.

Carrying leave forward

Since 1 January 2024, a worker is entitled to carry forward the leave they should have been allowed to take if:

- The employer has refused to pay a worker their paid leave;
- The employer has not given the worker a reasonable opportunity to take their leave and encouraged them to do so; or
- The employer failed to inform the worker that untaken leave must be used before the end of the year to prevent it from being lost.

A worker is also still able to carry forward leave into the following leave year if they have been unable to take the leave as a result of taking maternity or other family related leave or as a result of sick leave.

Normal Remuneration

The Regulations codify retained EU and domestic case law in relation to the definition of "normal remuneration" for holiday pay purposes. A week's pay for holiday now includes:

- Payments, including commission payments, intrinsically linked to the performance of tasks which a worker is obliged under their contract to carry out.
- Payments for professional or personal status relating to length of service, seniority, or professional qualifications.
- Payments, such as overtime payments, which have been regularly paid to a worker in the 52 weeks preceding the calculation date.

2. Indirect Discrimination

On 1 January 2024, a new section was added to the Equality Act 2010. S.19A was added putting the European decision in CHEZ on a statutory footing. This means that since 1 January 2024, claimants who do not have the protected characteristic of the disadvantaged group but share the same particular disadvantage, can bring indirect discrimination claims.

Section 19A states that:

A person (A) discriminates against another (B) if—

(a) A applies to B a provision, criterion or practice,

(b) A also applies, or would apply, the provision, criterion or practice to—

(i) persons who share a relevant protected characteristic, and

(ii) persons who do not share that relevant protected characteristic,

(c) B does not share that relevant protected characteristic,

(d) the provision, criterion or practice puts, or would put, persons with the relevant protected characteristic at a particular disadvantage when compared with persons who do not share the relevant protected characteristic,

(e) the provision, criterion or practice puts, or would put, B at substantively the same disadvantage as persons who do share the relevant protected characteristic, and

(f) A cannot show that the provision, criterion or practice is a proportionate means of achieving a legitimate aim.

We are yet to see how widely this new section will be interpreted but it does mean employers should consider the impact of rules, decisions, requirements etc. on a wider basis to ensure risks are properly taken into account.

3. Flexible Working

With effect from 6 April 2024, the requirement for an employee to have been continuously employed for a period of at least 26 weeks before making a request was revoked. It is now a day one right.

The following changes were introduced:

1. The process is triggered by the employee making a written request and they are no longer required to set out how their flexible working request would impact the business;
2. Employers have a duty to consult with employees about alternatives to their flexible working request and will not be permitted to refuse a request unless the employee has been consulted;
3. Two flexible working requests can be made in any 12-month period; and
4. Employers have to respond to flexible working requests within two months (instead of the previous three months).

Further changes are proposed to flexible working under the Employment Rights Bill (see below).

4. Family Leave Reforms

Protection from redundancy for pregnant employees and family-leave returners

Previously employees on maternity, shared paternity or adoption leave were given priority over other employees that are at risk of redundancy by having the right to be offered a suitable alternative role. From 6 April 2024 this protection was extended as follows.

1. Pregnancy – the protected period commences when the employee notifies the employer of their pregnancy (provided on or after 6 April 2024) and end either when maternity leave starts or if not entitled to maternity leave, two weeks after the end of pregnancy.
2. For maternity – the protected period covers 18 months from the first day of the estimated week of childbirth. The protected period can be changed to cover 18 months from the exact date of birth, if the employee gives the employer notice of this date prior to the end of maternity leave.
3. For adoption – the protected period covers 18 months from placement for adoption.
4. For shared parental leave – the protected period covers 18 months from birth, provided that the parent has taken a period of at least 6 consecutive weeks of shared parental leave. If the SPL taken is less than 6 weeks, the protection only applies during the period of SPL. This protection will not apply if the employee is otherwise protected under 1. or 2. above.

Paternity leave changes

Where the expected week of childbirth or placement for adoption is after 6 April 2024 there is now greater choice for employees to take paternity leave in two separate one-week blocks. Paternity leave can be taken in the first year after birth or adoption, rather than within the first 8 weeks.

It is worth noting that paternity leave cannot be taken after shared parental leave although this may change in future (see below).

5. Carer's Leave

There is now a legal entitlement of one week's unpaid leave in a rolling 12 month period for employees who are providing or arranging care for a dependant with a long term care need.

The legislation defines what is meant by a dependant for the purposes of providing or arranging care. This includes:

1. a spouse, civil partner, child or parent of the employee,
2. someone who lives in the same household as the employee, or
3. someone who reasonably relies on the employee to provide or arrange care

The legislation also sets out what is meant by a long-term care need. This includes:

1. an illness or injury (whether physical or mental) that requires, or is likely to require, care for more than three months,
2. a condition which satisfies the legal definition of disability under the Equality Act 2010, or
3. situations where care is required for a reason connected with old age.

The entitlement doesn't have to be taken in a single block of 5 working days or a calendar week. It can be exercised flexibly, namely individual or half days, provided that the total amount of time taken off work in a 12-month period does not exceed the total number of days the employee normally works in a normal week.

Employees are required to give reasonable notice to take carer's leave. A leave request cannot be denied but may be postponed, provided that you:

- Show that postponement would not be unduly disruptive to your business.
- Allow the employee to take a period of carer's leave within a month of the original period requested.
- Give the employee a written notice within 7 days of the request, setting out the reasons for postponement and the agreed dates the leave can be taken.

6. Fire and Rehire

The Code of Practice on Dismissal and Re-engagement (fire and rehire) came into force on Thursday 18 July 2024. The Code seeks to ensure that employers behave fairly and reasonably when trying to change employees' contractual terms.

There are many reasons why an employer may wish to change the terms of the employment contract, but where the change is unfavourable, e.g. a detrimental change to pay or benefits, the employee may not give their consent to the proposed change. If negotiation and consultation cannot resolve the issue, the employer may as a last resort terminate the existing contract and offer a new contract on the new terms.

The key elements of the Code are set out below:

1. Consultation Requirement: Employers are required to consult with employees and explore alternative options before considering dismissal and re-engagement. This consultation should be as long as

reasonably possible, but there is no specified minimum time period. Employers are encouraged to contact Acas at an early stage, before raising the prospect of 'fire and rehire' with the workforce.

2. Last Resort: The code emphasises that dismissal and re-engagement should only be used as a last resort. Employers should not threaten dismissal if it is not actually envisaged and must not use threats of dismissal to coerce employees into signing new terms and conditions. Employers should re-examine proposed changes if they are not agreed upon and consider feedback from employees and/or their representatives.
3. Tribunal Consideration: Employment tribunals must take the code into account in relevant cases, such as unfair dismissal claims. If an employer unreasonably fails to follow the code, tribunals can increase compensation by up to 25%. Conversely, if an employee unreasonably fails to comply, the tribunal can reduce any award by up to 25%.
4. No Stand-Alone Claim: There is no stand-alone claim for breach of the code's provisions. However, the code must be considered in tribunal proceedings where it is relevant. This means that while the code itself does not create a new cause of action, it influences the outcome of existing claims.
5. Protective Awards: Claims for a protective award for failure to inform and consult in respect of collective redundancies will not be subject to the compensation adjustment, since the relevant amending legislation was not brought into force before the general election.
6. Employer Obligations: Employers are advised to commit to reviewing the changes at a future set time and reconsider whether they are still needed. If more than one change is being implemented, employers might also consider introducing them on a phased basis.

It is worth noting that the Employment Rights Bill proposes to restrict the practice of fire and rehire so this may all change (see below).

7. Sexual Harassment

Since 26 October 2024, employers now have a new duty to take proactive and 'reasonable steps' to prevent sexual harassment of their employees in the workplace.

Employers facing an allegation of sexual harassment will need to demonstrate the targeted measures they have implemented to comply with this positive duty to protect employees from sexual harassment. Unlike the 'all reasonable steps' defence, the new duty is limited to preventing sexual harassment only so does not apply to other types of discrimination or harassment.

There is some guidance from the EHRC giving examples of what steps can be taken but reasonableness will vary from employer to employer and will depend on factors such as the employer's size, the sector in which it operates and its available resources. The guidance does make it clear that no employer will be exempt from the duty and there are no minimum standards an employer must meet.

EHRC steps:

1. Develop an effective anti-harassment policy
2. Engage your staff
3. Assess and take steps to reduce risk in your workplace
4. Reporting

5. Training
6. What to do when a harassment complaint is made
7. Dealing with harassment by third parties
8. Monitor and evaluate your actions

If an employee succeeds with a claim for sexual harassment, the Employment Tribunal must consider whether the employer breached its duty to take reasonable steps to prevent the harassment and whether there is a basis to award up to a 25% uplift on any award of compensation. The EHRC also has power to taken enforcement action directly.

8. Immigration

Right to work check guidance

On 23 September 2024 the Home Office updated its published guidance on right to work checks. The updated guidance makes a few changes including:

- Adding a requirement to conduct right to work checks on contractors / self-employed staff if you are a sponsor.
- Amending the guidance around supplementary work so as to confirm employees are permitted to carry out supplementary work in any role, not just the same SOC code as their sponsored role. The amendments also make it clear that if an employer becomes aware the individual is working in breach, it will lose the statutory excuse. Supplementary employers are now required as part of their right to work checks to have evidence of the worker's employment status, their job description and SOC code as well as confirmation of their contractual working hours. This evidence is likely to be in the form of a letter from the sponsor.

https://assets.publishing.service.gov.uk/media/66f1384102970476b261ab08/3_WORKING_COPY_-_Post_21_06_2024_Guidance_Right_to_work_checks_-_an_employer_s_guide__003_.pdf

E visas

Physical biometric residency permits (BRPs) are being abolished and replaced with e-visas. This change will be effective from 1 January 2025.

Employers should remind their staff to set up the online accounts in advance of the change.

Penalties

With effect from 13 February 2024, the civil penalties for illegal working have increased. The civil penalty for employers who employ an individual without the appropriate immigration permission in the UK have tripled from a previous position of £15,000 per illegal worker for a first breach, to £45,000 per illegal worker and from £20,000 per illegal worker for subsequent breaches to £60,000 per illegal worker.

Section 2 – Case Law

British Bung Manufacturing Company v Finn - harassment

FACTS: Mr Finn was employed as an electrician by The British Bung Manufacturing Company Ltd for over 20 years. At the end of July 2019 Mr Finn got into a dispute with a colleague who called Mr Finn a "bald c*nt" and made threats. At the time Mr Finn decided that no further action should be taken because of Mr King's personal circumstances, however in March 2021 Mr King threatened the claimant again.

It was alleged that the Claimant falsely suggested to Mr King that he had brought these matters to the attention of the police and two months later the Claimant was dismissed by the Company on grounds of gross-misconduct.

The Claimant brought several claims including harassment related to sex.

DECISION: The employment tribunal held that baldness was much more prevalent in men than women and that it was inherently related to sex. (The tribunal held that it was not inherently related to age because baldness affects (predominantly) adult males of all ages.) The tribunal upheld the claim for harassment related to sex. The tribunal found that the conduct was unwanted and that the words had been used with the purpose of violating Mr Finn's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

The EAT dismissed the appeal.

COMMENTS: The case serves as a useful reminder of how important it is for employers to take reasonable steps to prevent harassment in the workplace in order to minimise being held vicariously liable for the actions of their employees. It is also a stark reminder that 'banter' between colleagues can result in an ET claim being brought against the company.

Valimulla v. Al-Khair Foundation – redundancy consultation

FACTS: Mr Valimulla was employed by the Al-Khair Foundation in the role of a liaison officer, of which there were three others carrying out the same/similar roles in other geographical locations. Work for liaison officers decreased during the pandemic. Yet, Mr Valimulla was the only individual placed at risk of redundancy in a pool of one. The other liaison officers were not placed at risk. Three consultation meetings were held, and after the third, Mr Valimulla was dismissed by reason of redundancy.

Mr Valimulla brought a claim of unfair dismissal, advancing the argument that the redundancy process was unfair, specifically raising concerns about being selected from a pool of one.

DECISION: The employment tribunal held that he had been fairly dismissed for redundancy as his role was 'unique'. Consequently, Mr Valimulla appealed on the grounds that the ET had made insufficient findings of fact relevant to the fairness of the Al-Khair Foundation's approach to pooling for the purposes of selection for redundancy and that the material issue, namely that Mr Valimulla's complaint that he was not consulted with in relation to being placed in a pool of one, was not adequately addressed.

The EAT found that Mr Valimulla had been unfairly dismissed on procedural grounds because of a failure to adequately consult about pooling. Despite consultation meetings being held, the consultations did not discuss why Mr Valimulla was placed in a pool of one that did not include the other liaison officers.

COMMENTS: This case reiterates the importance of ensuring that there is a fair basis upon which individuals are selected for redundancy. An employer must be able to demonstrate that they have genuinely applied their mind to the question of pooling. There was no evidence that the employer had considered pooling the employee

with other employees in the same role in different geographical locations. In addition, this case underpins the importance of the consultation process and the fact that discussions should be meaningful and genuine.

When it comes to selection of the pool, the starting point is to consider which particular kind of work is ceasing or diminishing and which employees perform that kind of work, which should include consideration of, as this case has shown, employees who are doing similar work at different locations. It is important to look beyond the terms and conditions of an employee's contract and look at the reality of the situation and what the employee does on a day-to-day basis in making decisions regarding the pool.

Miller v Rentokil - reasonable adjustments

FACTS: Mr Miller was a field-based pest controller, employed by Rentokil. He was diagnosed with multiple sclerosis and found he could no longer carry out the work for his role. Rentokil, looked at other jobs within the business that the Claimant could do and the Claimant applied for an administrator role. He was however unsuccessful following the interview process and was then dismissed.

The Claimant claimed that failing to place him in an alternative, suitable role on a trial basis amounted to a failure to make reasonable adjustments.

DECISION: The Tribunal upheld his claim. The Respondent appealed this decision based on a number of grounds including:

1. the tribunal had erred by regarding the trial period of a new role as a reasonable adjustment
2. the tribunal erred in concluding that the vacancies for which the claimant may have been suitable for caused the burden of proof to shift to the respondent to show that it had not failed to make reasonable adjustments
3. where an employer genuinely and reasonably concludes that an employee is not qualified and suitable for a role, it cannot be a reasonable adjustment to appoint them to it

The EAT, however, agreed with the Tribunal, the Claimant was placed at a substantial disadvantage because of his disability. They found that the Claimant had shown that the alternative role was potentially appropriate and suitable and therefore the burden passed to the Respondent to show that it was not reasonable to put the employee in that role.

COMMENT: this case highlights that employers need to mindful when looking at implementing reasonable adjustments for an employee with a disability. They will need to consider whether there is a suitable role elsewhere in the business that the individual could do on a trial basis. Whether the role is suitable will be dependent on the facts but it will be for the employer to prove that it would not have been reasonable to place the employee there if they chose not to.

Cairns v Royal Mail Group - reasonable adjustments

FACTS: The Claimant was employed as a postal delivery person on outdoor duties. A knee injury and osteoarthritis (a disability) meant he could no longer work outdoors. He moved to a supernumerary indoor role for a period. The Respondent began a consultation to dismiss him on grounds of ill-health retirement as he could no longer do his outdoor job. At the time, no other indoor vacancy existed and the Claimant was dismissed.

He claimed unfair dismissal. He also claimed that failing to wait for the imminent merger of the Claimant's postal centre with another centre (which would have created indoor roles), was a failure to make reasonable adjustments and discrimination arising from a disability.

DECISION: The Tribunal dismissed all claims, holding that there comes a time when a surplus job must come to an end. The Claimant appealed the outcome on discrimination. Allowing the appeal, The EAT held that the Tribunal had focused too much on the situation at the time of dismissal. In doing so, it had failed to consider an essential part of the Claimant's case: that at the time of his appeal, the Respondent ought to have kept him in employment so that he could be assigned to an indoor role, on the merger of the two postal offices.

It was the Claimant's case that it would have been a reasonable adjustment to keep him in employment for this short time. He also argued that his inability to work outdoors arose from his disability. The decision to dismiss him for this was discriminatory. It was also unjustified, given the plan for new indoor roles.

Bradley v The Royal Mint - Discrimination

FACTS: Ms Bradley had worked for the Royal Mint since Jan 2009, was promoted until she became the Director of HR directly reporting to the CEO. She had suffered from depression and anxiety since 2013 and received a diagnosis of ADHD in 2022. In 2019 and 2021 Mrs Bradley attempted to end her employment but each time the CEO refused to accept her resignation as it was clear she was making these decisions whilst unwell.

Mrs Bradley was open about her ADHD diagnosis and discussed it with colleagues. Medication was prescribed but she stopped taking antidepressants without medical guidance. At this time she had a clash with the executive team and became upset. The CEO discussed the issues with her and things calmed down and Mrs Bradley seemed 'normal'. Four weeks later she resigned, the CEO mindful of previous resignations, asked if she was okay. They discussed the reasons for her resignation which included money, taking more lucrative interim roles in London, the fact her husband was shortly due to retire and she felt her job had become stale and repetitive. Three weeks after resigning Mrs Bradley tried to rescind her resignation explaining to the CEO that she had not been herself at the time, the CEO refused her request.

She brought various claims including discrimination arising from a disability.

DECISION: She was successful with her claim. The Tribunal set out that based on medical evidence it thought that Mrs Bradley resigned due to her mental health and ADHD. The employer failed to take any medical advice at the time, instead preferring to rely on the CEOs observations. Whilst the Tribunal didn't go so far as to suggest the outcome would have been different had the Royal Mint sought medical advice as to Mrs Bradley's mental capacity for making such a decision, the point was that they had not taken these steps at all despite being sufficiently aware of her disability.

COMMENTS: Whilst this Employment Tribunal decision is not binding on other tribunals and is very fact sensitive, it does remind employers of the need to be vigilant and to understand when employees might be deemed disabled and protected, and that they should defer to medical professionals for support and advice in place of relying on their own assessment.

Rollett v British Airways – indirect discrimination

FACTS: BA introduced scheduling changes after a restructure. A group of claimants brought claims for indirect discrimination alleging that the schedule (a PCP) disadvantaged:

- non-British nationals, who were more likely to commute from abroad (indirect race discrimination).

- women, who were more likely to have caring responsibilities (indirect sex discrimination).

Amongst the group of Claimants was a man who was a carer and claimed the 'same disadvantage' as the disadvantaged group (women). Another was a British national who lived abroad. She claimed the 'same disadvantage' as the disadvantaged group (non-UK nationals). Neither of these Claimants had the protected characteristic relied upon in the claim.

DECISION: The Tribunal held that s19 Equality Act 2010 (which contains the indirect discrimination provisions) did not allow for associative indirect discrimination on its face. However, it had to be read in line with EU law principles insofar as possible. In the services case of CHEZ, the CJEU held that a person could claim indirect discrimination if they lacked a relevant protected characteristic so long as they suffered the same disadvantage as the group with that characteristic. Applying s19 in light of CHEZ, the tribunal upheld the claims. The EAT dismissed the appeal.

COMMENTS: As flagged above, the principle in CHEZ has now been incorporated into the Equality Act. This interpretation widens the protection for indirect discrimination as those without a particular characteristic may still be able to pursue a claim.

Gallagher v McKinnon's Auto and Tyres Limited [2024] EAT 174 – protected conversations

FACTS: The Claimant worked as a branch manager and was absent due to illness. Upon his return, the Respondent decided his position was no longer needed and proposed a redundancy process. At a meeting stated to be 'off-the-record', the Claimant was offered a settlement agreement and given 48 hours to respond, with the indication that redundancy would follow if he declined. The Claimant refused and was subsequently dismissed for redundancy.

He claimed unfair dismissal and attempted to use the settlement discussions in evidence.

DECISION: The Tribunal ruled these discussions were protected pre-termination negotiations, and since there was no improper behaviour, they were inadmissible.

The Claimant appealed to the EAT alleging there was improper behaviour as:

- He was told the meeting was a 'return to work' meeting and was taken by surprise;
- He was only given 48 hours to consider the offer; and
- He was told he would be made redundant if the offer was not accepted.

The EAT dismissed the appeal. It held that points 1 and 2 did not represent improper behaviour in the circumstances. In respect of 3, it was accepted that the Respondent had told the Claimant that his role was redundant. However, this did not mean that dismissal was inevitable as there was still the possibility of alternative employment.

COMMENTS: The case suggests it is difficult for an employee to argue settlement discussions should be admitted due to improper conduct. However, the decision is fact sensitive and employers still need to be careful to ensure protected conversations are handled appropriately and undue pressure is not put on an employee.

Section 3 – The Budget

On 30 October 2024, The Chancellor delivered Labour's first Budget in nearly 15 years, setting out the Labour governments vision for the UK economy. The proposals are designed to address cost-of-living pressures, promote fairness in the workforce, and support lower-income workers. However, they also pose considerable implications for employers, particularly in terms of budgeting, recruitment, and workforce planning.

1. National Insurance Contributions Increases

Labour's budget announced a rise in employer National Insurance contributions, set to increase to 15% from April 2025, with a lowered threshold of £5,000. The Chancellor acknowledged the financial impact this will have, especially on smaller businesses, which led to the increase in Employment Allowance from £5,000 to £10,500. Notwithstanding this move to alleviate the pressure on SMEs, all employers will need to prepare for this substantial rise in employment costs, and HR professionals should consider its implications for recruitment and salary budgeting.

2. National Living Wage and National Minimum Wage Increases

The Budget announced a 6.7% rise in the National Living Wage, bringing it to £12.21 per hour for workers aged 21 and above, effective April 2025. Meanwhile, 18-20-year-olds will benefit from a record-breaking 16.3% increase in the National Minimum Wage, raising it to £10.00 per hour. These hikes underscore the government's commitment to improving pay for lower-income workers, but they also represent additional costs for employers, particularly in sectors with large hourly-paid workforces. Employers will need to adjust payroll budgets accordingly and potentially revisit staffing models to accommodate the wage increase.

3. Abolition of Non-Dom Tax Status

From April 2025, the government will abolish the non-domiciled (non-dom) tax status, a system that allows individuals to avoid paying UK taxes on income earned outside the country. This measure aims to ensure that those who make the UK their home contribute fairly to the public finances. This may affect the recruitment of foreign workers, particularly in sectors that rely on global talent. Employers may need to revise their policies around international employees and ensure they are in compliance with the new tax rules.

4. Support for Carers and Increase in Carers' Allowance

In a move to support those with additional caring responsibilities, the budget includes an increase in the Carers' Allowance. Carers will now be able to earn up to the equivalent of 16 hours at the NLW while receiving the allowance, allowing them to earn more than £10,000 per year. For employers, this may influence the availability of workers in caregiving roles or industries where workers balance caregiving duties with employment. Employers may need to implement more flexible working practices to accommodate employees with caregiving responsibilities.

5. Boosting Productivity and Addressing Economic Inactivity

To combat economic inactivity, the government is launching the 'Get Britain Working' initiative, which aims to assist individuals who are economically inactive, including those with disabilities or long-term health issues. With £240 million allocated to 16 "trailblazer" projects, businesses may see changes in recruitment patterns as these initiatives provide tailored support for workers entering the labour market. Employers may be involved in coordinating with these programs to ensure inclusive hiring practices.

6. Uprating of Pensions and Welfare Benefits

The budget includes a 4.1% increase in both the basic and new state pensions, benefiting over 12 million pensioners. Additionally, the government will continue its commitment to maintaining the triple lock, ensuring that pensioners receive the pension they are owed. For HR professionals, this increase in state pension rates could impact retirement planning for employees, especially those nearing retirement age. Employers may need to adjust their benefits packages and consider offering additional pension planning support to employees.

7. Focus on Public Service Investments and Health Funding

The Chancellor also announced a significant investment in public services, including a £22.6bn increase in day-to-day health funding. HR professionals in the healthcare sector may see improvements in resources and facilities as part of this plan. Furthermore, the budget includes funding for the NHS to reduce waiting times and improve treatment capacity, which could create additional employment opportunities within healthcare and social services.

Section 4 - Employment Rights Bill and the future

The Employment Rights Bill was published on 10 October 2024. It proposes a number of potentially significant changes to employment law but the detail is currently lacking and there is currently no set date for when the changes will be implemented.

Some of the key proposed changes include:

1. Making Unfair dismissal a day one right

Currently employees need to have two years' service before they can pursue a claim of ordinary unfair dismissal. The Bill proposes removing the two-year qualifying period, making unfair dismissal protection available from the first day of work unless one of the exceptions applies. The exceptions are said to be for employees who have not yet started work and for dismissals during the initial period of employment (also described as a statutory probationary period). An amendment to the bill published on 26 November 2024, referred to this being a period of 3-9 months.

The detail about what employers will need to do in order to dismiss during this initial period is unknown. However, bill does make it clear that this period only applies to dismissals for conduct, capability, statutory restriction or some other substantial reason. Redundancy dismissals will give employees rights from day one.

The government has said that substantial consultation will be undertaken in relation to:

- the length of the initial statutory probationary period;
- what a compensation regime for successful claims during probation will be, and whether tribunals will be prevented from awarding full unfair dismissal compensatory damages;
- how to "ensure the probation period has meaningful safeguards to provide stability and security for business and workers";
- how any lighter-touch dismissal process will interact with the ACAS Code of Practice on Disciplinary and Grievance procedures; and
- ways to signpost and "support employees to ensure they have proper recourse if they are unfairly dismissed but also make clear where bringing claims might be unsuccessful".

Consultation will take place in 2025.

2. Zero Hour contracts

The headline proposal on Zero Hours outlined by the Bill is the right of workers to be offered a fixed hours contract based on hours that they habitually work over a set reference period, with the government's preference for this being 12 weeks.

The key wording here is the right for workers to be offered such terms rather than any automatic trigger, maintaining the option for those wishing to retain the flexibility of a zero-hour arrangement.

The Bill also states that workers on zero hours contracts will be given the right to reasonable notice of shifts and compensation for shifts that are moved or cancelled at short notice; what precisely constitutes "moved" or "short notice" will be set by the secretary of state in future regulations.

3. Family Friendly Rights

Parental Leave - The qualifying period will be removed and it will become a day one right.

Paternity Leave **-** The qualifying period will be removed and it will become a day one right. Employees will also be able to take paternity leave after a period of shared parental leave.

Bereavement Leave – this will be extended beyond the existing parental bereavement leave so as to cover the loss of others. It is anticipated it will mirror the people covered by legislation relating to time off for dependants.

Flexible Working – An element of reasonableness is to be added in relation to the decision rather than only the process.

Pregnancy and Maternity – the Bill introduces the idea of providing protection against dismissal and for this protection to apply to dismissals other than redundancy. However, the Bill refers to the additional protection being introduced through further regulations so no detail is given.

4. Harassment

The Bill proposes that employers will be liable for third party harassment. There will be a defence if an employer can show it has taken all reasonable steps to prevent it.

Currently, although employers have a duty to prevent employees being sexually harassed by third parties, there is no claim an employee can bring against the employer if harassment does occur. The proposal under the Bill will fill this gap.

5. Fire and Rehire

Presently if a contract variation is not accepted by an employee (following consultation), an employer can serve notice to terminate on the existing terms, offering to re-engage the employee on the amended terms. This is usually where there is a sound business reason such as addressing harmonisation or economic changes.

The proposal in the Bill is to remove this practice, and instead make it automatically unfair to dismiss an employee on their current terms where they refuse to accept a contract variation. There are exceptions where the reason for the change is to prevent or reduce the effect of financial difficulties it may be experiencing.

Given the challenge to amending employment contracts without the employee's consent, employers will have to use the consultation process to find a variation which is acceptable. It is likely that employers will increasingly be seeking to use well drafted contract variation clauses to make amendments.

6. Collective Consultation

The Employment Rights Bill proposes to change the way in which numbers of redundancies are looked at when deciding whether collective consultation obligations are triggered. It proposed to remove reference to "a single establishment" so that where 20 or more redundancies are proposed in total across a number of different locations, the employer will need to collectively consult, even if the number in one particular location is under 20.

Speakers

Kate Benefer, Partner
Kate.benefer@rwkgoodman.com
01865 268639

Sophie Waller, Solicitor

Sophie.waller@rwkgoodman.com
01865 268376