

SEEKING CLARITY FOR EMPLOYMENT LAW IN 2024

Wednesday 3 July 2024

 **ADDLESHAW
GODDARD**

MORE IMAGINATION **MORE IMPACT**



SPEAKERS



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INSIGHT



Retained EU Law
(Revocation and
Reform) Act
2023 receives
Royal Assent

Cost of Living



2024
SO FAR...



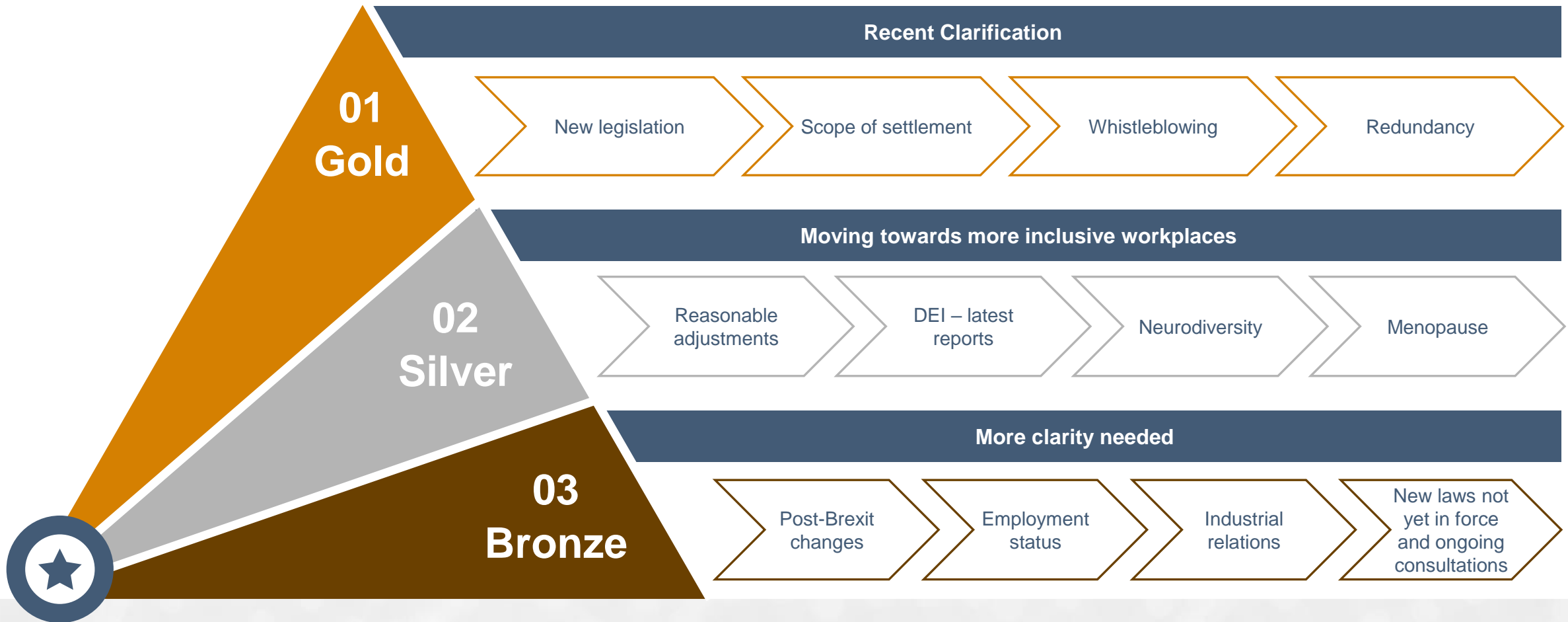
UEFA
EURO2024
GERMANY



PARIS 2024



SEEKING CLARITY IN EMPLOYMENT LAW IN 2024: WHAT ARE WE GOING TO COVER?



A close-up, black and white photograph of an hourglass. The top bulb is partially filled with sand, and a thin stream of sand is falling through the narrow neck into the bottom bulb. The lighting creates strong highlights and shadows, emphasizing the texture of the sand and the smooth surface of the glass.

RECENT CLARIFICATION

NEW LAWS



NEW UNPAID CARER'S LEAVE

UNPAID CARER'S LEAVE



One week's unpaid leave for unpaid carers per year.

Day one right.

For employees to take leave to provide or arrange for care of an immediate family member, someone in their household or who reasonably relies on them for care with a defined long-term care need.

Half or whole days or block up to one week.

Notice does not need to be in writing.

Employer cannot decline a request but may postpone on prescribed grounds.

REDUNDANCY PROTECTION EXTENSION FOR NEW PARENTS



Up to 18 months protection from redundancy for expectant mothers and new parents

During pregnancy

During / after maternity leave or adoption
leave or shared parental leave

01

For any employees who notify
their employer of their pregnancy
on or after 6 April 2024

02

For any maternity / adoption
leave ending on or after
6 April 2024

03

To a period of six consecutive
weeks' shared parental leave
starting on or after 6 April 2024

FLEXIBLE WORKING REQUESTS

ADDITIONAL RIGHTS



FROM 6 APRIL 2024:

Two statutory requests in any 12-month period (previously one)

Response within two months (previously three)

No refusal without prior employee consultation

No requirement for employee to explain effect of change on employer or how to deal with it

Day 1 right

Eight grounds for refusing request unchanged

EMPLOYMENT RELATIONS (FLEXIBLE WORKING) ACT 2023



CHANGES TO PATERNITY LEAVE

PATERNITY LEAVE



Two separate blocks of one week each

At any time within the first 52 weeks of birth (or placement for adoption)

28 days' notice before the date that they intend to take each period of leave (and pay, where they qualify)

In relation to children whose expected week of childbirth / date of placement or expected entry to GB for adoption is on or after 6 April 2024

PATERNITY LEAVE (BEREAVEMENT) ACT 2024

01

For fathers and partners where the mother has died in the first year after birth or adoption

02

Day 1 right:
Removing 26 weeks' qualifying employment

03

Allowing paternity leave even where shared parental leave was taken

04

Provisions for KIT days and enhanced redundancy protection

05

Provisions where child also dies or is returned after adoption

06

Regulations will provide for paternity leave to be extended to 52 weeks

PRE-GENERAL ELECTION: THE WASH-UP



01

New Code of Practice on dismissal and re-engagement

- Order made on 24 May 2024
- Due into force 18 July 2024
- No protective award yet

03

Code of Practice on fair and transparent distribution of tips

- Approved on 24 May 2024
- No date for coming into force yet

02

Confidentiality clauses/NDAs

- Victims and Prisoners Act 2024
- Royal Assent on 24 May 2024
- No date for coming into force yet

04

New Paternity Leave (Bereavement) Act 2024

- Royal Assent on 24 May 2024
- No date for coming into force yet

IMMIGRATION: KEY CHANGES FOR 2024

SALARY THRESHOLD INCREASES

- **Skilled Worker visas** – increase in salary threshold to £38,700
- **Family visas** – increase in salary threshold - £29,000 to rise to £38,700
- **Global Business Mobility** – salary threshold for Senior or Specialist Worker and UK Expansion Worker routes increase to £48,500

OTHER KEY CHANGES

- **Immigration Health Surcharge** – £1,035 per year of sponsorship
- **Permitted activities for visitors** – attend remote meetings and work remotely subject to limitations
- **Reform of Shortage Occupation List** – replaced with Immigration Salary List
- **Graduate visas** review
- **Health and Care Worker visas**

IMMIGRATION: KEY CHANGES TO RIGHT TO WORK CHECKS GUIDANCE



INCREASED CIVIL PENALTIES

Up to £45,000 per employee for first breach

Up to £60,000 per employee for repeat breaches



REMOVAL OF 28 DAY CONCESSION FOR LATE APPLICANTS TO EUSS

Check if employee hired prior to June 2021 has pre-settled/settled status under EUSS/another visa



ADDITIONAL EVIDENCE FOR SUPPLEMENTARY EMPLOYMENT

Additional evidence to confirm not working more than 20 hours of supplementary employment/week



RECENT CLARIFICATION
SCOPE OF SETTLEMENT

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Bathgate v Technip Singapore PTE Ltd (Court of Session)

Settlement agreements can be used to settle **unknown future claims** provided that the potential claim is **identified** within the agreement.

- Followed decision in Bathgate.
- Discrimination claim precluded by settlement agreement where employment continued.

Clifford v IBM United Kingdom Ltd (EAT)

SCOPE OF SETTLEMENT



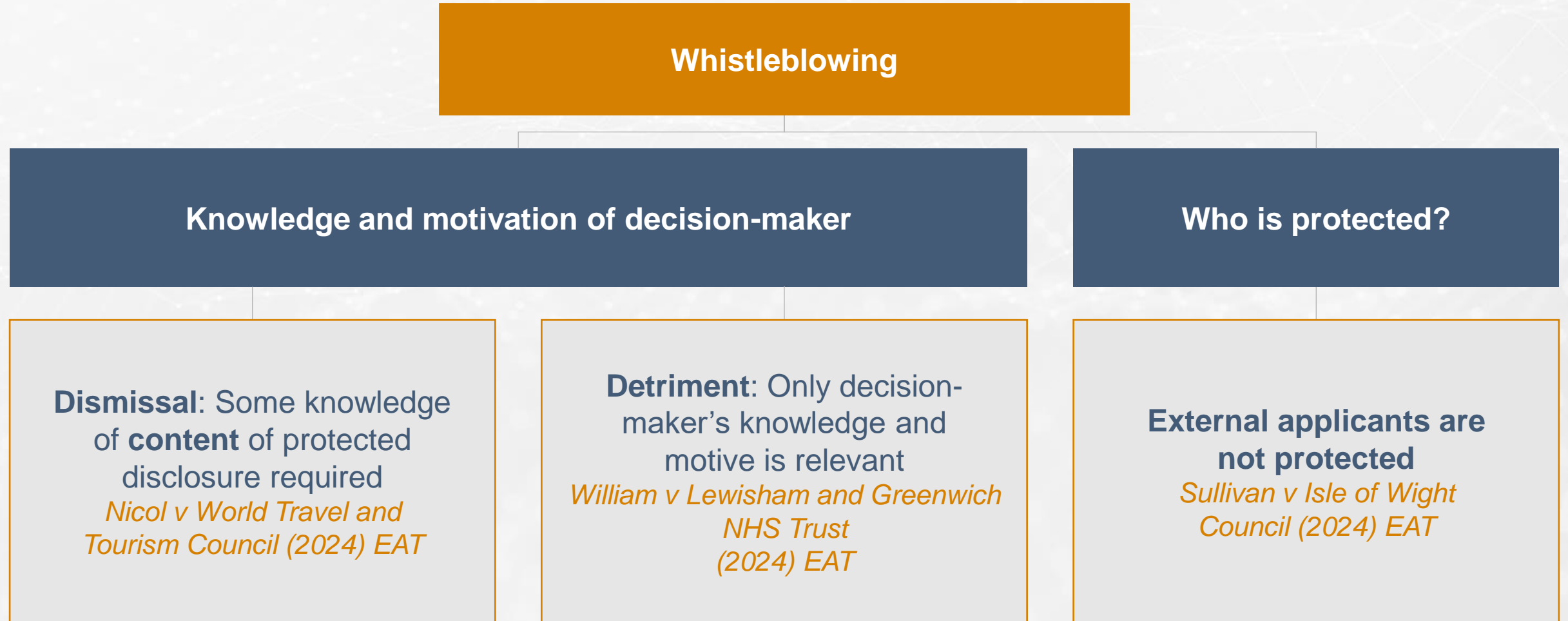
Ajaz v Homerton University Hospital NHS Foundation Trust (EAT)

- Bringing new whistleblowing detriment claim after COT3 settlement was an abuse of process.
- New claim relied on the same protected disclosures, but new detriments.
- COT3 settled the “issues” in the proceedings, not just the complaints.

RECENT CLARIFICATION WHISTLEBLOWING



WHISTLEBLOWING



RECENT CLARIFICATION REDUNDANCY



REDUNDANCY: EARLY CONSULTATION

SELECTION / SCORING

- Clear absence of meaningful consultation at the formative stage of the redundancy selection and scoring process.
- *De Bank Haycocks v ADP RPO UK Ltd (EAT)*

POOLING

- Failure to address fairness of employer's approach to pooling.
- Consultation must take place at a time when it can potentially make a difference.
- Allow time for responses to a proposal to be considered and reflected upon before decision made.
- *Valimulla v Al-Khair Foundation (EAT)*





**MOVING TOWARDS MORE
INCLUSIVE WORKPLACES
LATEST DEVELOPMENTS**

DIRECTION OF TRAVEL CONTINUES TOWARDS MORE INCLUSIVE WORKPLACES

1

Menopause

EHRC Guidance for Employers
Rooney v Leicester CC Johnson v Bronzeshield

2

Neurodiversity

Buckland Autism Review
CIPD Guide to Neuro-inclusion

3

DEI

Sexism in the City inquiry responses
Inclusive Britain (second update report)
Parker Review

4

Reasonable adjustments - A trial period
can be a reasonable adjustment
Rentokil Initial UK Limited v Miller (EAT)



MORE CLARITY NEEDED
POST-BREXIT ADJUSTMENTS

POST-BREXIT ADJUSTMENTS

01

TUPE

- Changes to transfers taking place on or after 1 July
- Latest consultation closes 11 July

02

Changes to holiday pay and entitlement

- 1 January 2024
- Holidays years on or after 1 April 2024

03

Post-Brexit amendments to the Equality Act 2010



INDIRECT ASSOCIATIVE DISCRIMINATION

AMENDMENT: S19A EQUALITY ACT 2010 – ONE TO WATCH

Example: A man who is disadvantaged at work by their childcare responsibilities in the same way as women with childcare responsibilities.

Example: A trans man with a gender recognition certificate suffering menopause symptoms who is disadvantaged by an employer's PCP in the same way as female menopausal colleagues.

FLEXIBLE WORKING REQUESTS

Consider potential indirect associative discrimination with flexible working requests and predictable working pattern requests (from September 2024)



MORE CLARITY NEEDED
EMPLOYMENT STATUS

EMPLOYMENT STATUS: CASES UPDATE



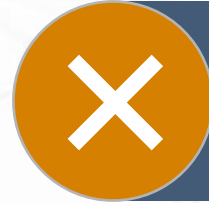
EMPLOYMENT STATUS

Pilot supplied by agency via a service company was an agency worker, not self-employed.

Ryanair DAC and another v Lutz (EAT)

Coastal rescue service volunteer was "worker" when undertaking remunerated activities.

Groom v Maritime and Coastal Agency (EAT)



NO EMPLOYMENT STATUS

No employment relationship between Deliveroo and riders.

Independent Workers Union of Great Britain v Central Arbitration Committee (EWSC)

Individual providing services through genuine partnership arrangement precluded from claiming employment status.

Anglian Windows Ltd v Webb (EAT)



MORE CLARITY NEEDED
OTHER AREAS OF
UNCERTAINTY

WHERE CLARITY IS NEEDED:

- **Consultation on re-introduction of fees for ET and EAT**
- Closed on 25 March 2024.
- No response was published.



Tribunal fees



Right to Request a Predictable Working Pattern

- **Right to request PWP** where lack of predictability, change relates to work pattern and purpose to get a more predictable work pattern.
- Was expected in **Sept 2024**.
- Secondary legislation still required.

- **New duty to prevent sexual harassment in the workplace:** Due to come into force 26 October 2024.
- Awaiting updated Technical Guidance from EHRC.
- Labour proposals go further.

Duty to prevent sexual harassment in the workplace



Industrial Relations

- **Judicial Review** of government's decision to impose Minimum Service Levels during strikes.
- Consultation on **hiring agency workers** to cover for staff taking industrial action.



MORE IMAGINATION MORE IMPACT

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