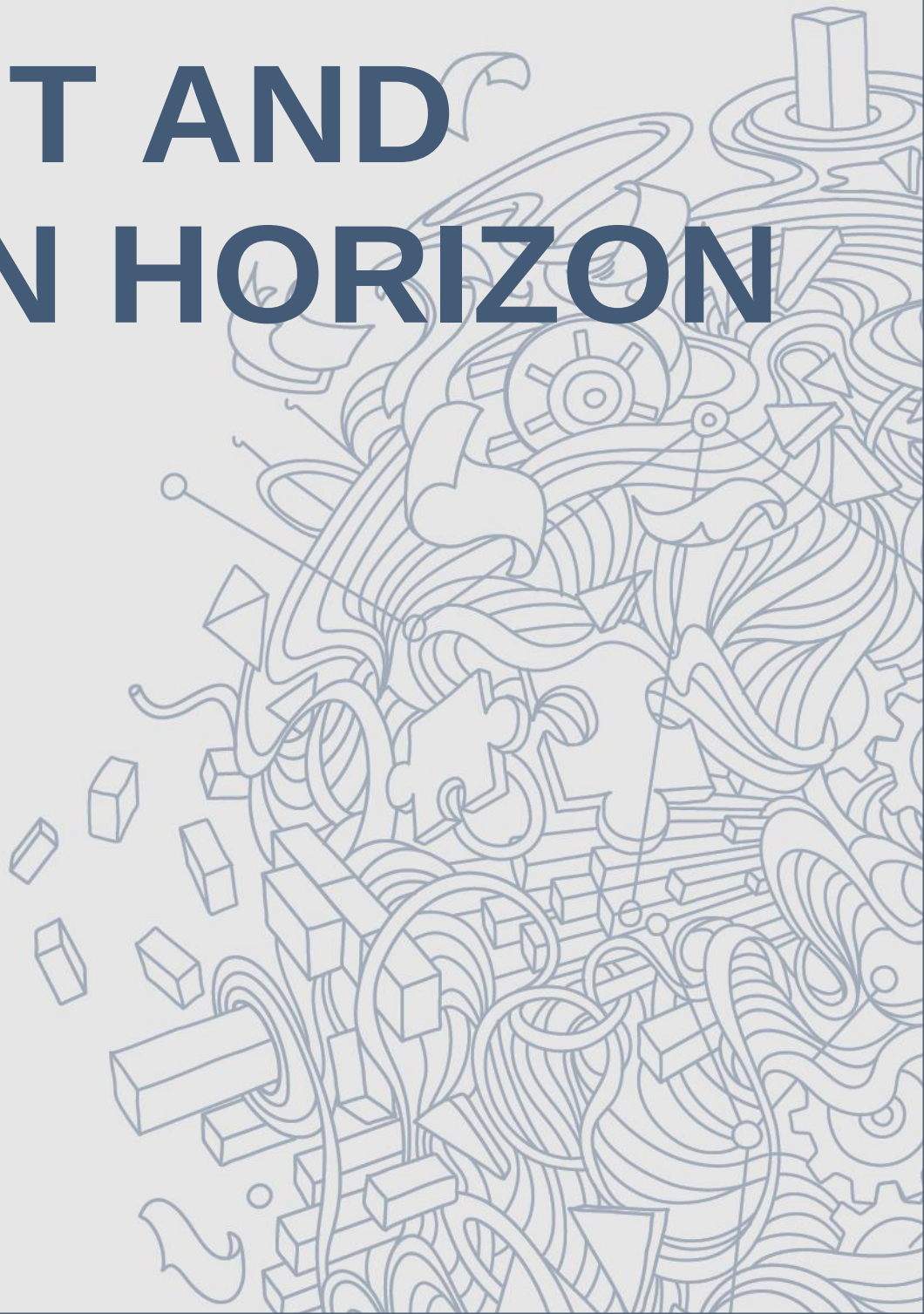
EMPLOYMENT AND IMMIGRATION HORIZON SCANNER

May 2023



ADDLESHAW GODDARD

FUTURE KEY LEGISLATION DEVELOPMENTS

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
1.	Legislation will be required	**Statutory Code of Practice on Dismissal and Re-engagement** On 29 March 2022, the Government announced that a new Statutory Code of Practice will be published on the use of dismissal and re-engagement practices, sometimes called "fire and rehire", to bring about changes to employees' terms and conditions (one of nine measures to protect seafarers' rights in the light of mass redundancies by P&O Ferries which took place without prior notice or consultation). On 24 January 2023, the Government published the draft Code of Practice on Dismissal and Re-engagement (the Code) and launched a consultation seeking views on it. The Code is intended as a practical guidance for employers that clarifies the steps employers should take when seeking to change contractual terms and conditions of employment where there is a prospect of dismissal and re-engagement. It will not apply where an employee is dismissed because there is a genuine redundancy as defined in the Employment Rights Act 1996. The purpose of the Code is to ensure that an employer takes all reasonable steps to explore alternatives to dismissal and engages in meaningful consultation with trade unions, other employee representatives or individual employees in good faith, with an open mind, and does not use threats of dismissal to put undue pressure on employees to accept new terms, instead of seeking to find an agreed solution. The Code sets out the process an employer should follow including: • Communicating the wish to change terms and conditions. • Re-examining the business strategy behind the changes in light of the potentially serious consequences for employees and continuing to do so throughout the discussion and consultation process. • Sharing information on the proposals as early as possible. • Engaging in meaningful consultation conducted in good faith with the intention of seeking an agreed resolution. The timing of the consultation process will depend on the circumstances. • Putting agreed changes in writing.	The consultation closed on 18 April 2023.

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		• Where it has not been possible to reach agreement, following the guidance set out in the Code for the unilateral imposition of new terms where, as a last resort, an employer decides to dismiss and re-engage on new terms. While the Code imposes no legal obligations on the parties, under section 203(3) of the *Trade Unions and Labour Relations (Consolidation) Act 1992* (TULRCA), tribunals and courts will be required to take the code into account when considering relevant cases. Under section 207A, they will have the power to apply an uplift of up to 25% of an employee's compensation where the code applies and the employer has unreasonably failed to follow it or a decrease of up to 25% where the employee has unreasonably failed to comply The consultation closed on 18 April 2023.	
2.	Diversity and inclusion resources for employers, and guidance on positive action	**Diversity & Inclusion: New resources to come and new guidance on positive action in the workplace** On 17 March 2022, in the Inclusive Britain Report the Government committed to publishing diversity and inclusion resources for employers, and guidance on positive action by Spring 2023. Investment in the EHRC was also announced and is intended for the Commission to use to challenge race discrimination through investigations and supporting individual cases. The guidance on positive action in the workplace was published on 17 April 2023. It explains how employers who choose to use the positive action measures in the Equality Act 2010 to help those who share a particular characteristic to overcome certain barriers and improve representation in their workforce. It also makes clear that employers need to ensure they do so in a way that does not unfairly disadvantage other groups, as this could amount to "positive discrimination" which is unlawful.	Published 17 April 2023.
3.	Voluntary Ethnicity Pay Reporting: Guidance for Employers	**Ethnicity pay gap reporting: voluntary reporting guidance** In the Government's response to the Commission on Race and Ethnic Disparities (see the Inclusive Britain Report published on 17 March 2022), the Government confirmed that it will not be legislating for mandatory reporting "at this stage" as it wants "to avoid imposing new reporting burdens on businesses as they recover from the pandemic". However, the Government pledged to support employers with voluntary reporting by publishing new guidance in summer 2022. On 1 February 2023 the Government confirmed the guidance would be published "in due course". On 17 April 2023, the Government published the Guidance for employers on ethnicity pay reporting. The guidance gives advice on: • Collecting ethnicity pay data for employees;	Published 17 April 2023

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		• How to consider data issues such as confidentiality, aggregating ethnic groups and the location of employees. It recognises that Ethnicity Pay Gap Reporting is much more complex than Gender Pay Gap Reporting and employers may have to make decisions about how best to combine different ethnic groups to ensure results are reliable and statistically sound and to protect confidentiality. Complexities also mean employers must carefully scrutinise and explore the underlying causes for any pay disparities. • The recommended calculations and step by step instructions on how to do them. It expresses the need for sensitivity and transparency, with employers encouraged to seek expert advice. Recommended measures include: ○ percentage of each ethnic group in each hourly pay quarter; ○ mean (average) ethnicity pay gap using hourly pay; ○ median ethnicity pay gap using hourly pay; ○ percentages of employees in different ethnic groups in your organisation; ○ percentage of employees who did not disclose their ethnicity – they either answered 'prefer not to say' or gave no answer when you attempted to collect their ethnicity. • Further analysis that may be needed to understand the underlying causes of any disparities. It lists a number of questions to consider when seeking to understand the cause of the pay gap: ○ Are some ethnic groups more likely to be recruited into lower paid roles in your organisation? ○ Is there an imbalance in individuals from different ethnicities applying for and achieving promotions? ○ Do people from certain ethnic groups get 'stuck' at certain levels within your organisation? ○ Are some ethnic groups more likely to work in specific roles than other ethnic groups in your organisation, and is this reflected in pay? ○ Are some ethnic groups more likely to work in particular locations, and does this have an impact on pay? ○ Do employees from different ethnic groups leave your organisation at different rates? ○ Do particular aspects of pay (such as starting salaries and bonuses) differ by ethnicity? It also lists possible reasons why an ethnic group might be underrepresented in the organisation and how it may be helpful to compare workforce data against local ethnicity population data from the 2021 Census. • Reporting the findings. There is no requirement to do so, but employers may choose to do it to improve transparency. But employers should take care in explaining the results due to the complexity of the calculations avoiding one overarching measure, but rather present all the calculations and produce analysis for individual ethnic minority groups as well as the percentage of employees who have responded "prefer not to say".	

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		• Considering an employer action plan with the importance of taking an evidence-based approach towards actions.	
4.	The Retained EU Law (Revocation and Reform) Bill 2022	**Sunset on Retained EU Law: The Retained EU Law (Revocation and Reform) Bill** After Brexit and to ease the transition out of the EU, the body of applicable EU law which was in force in the UK on 31 December 2020 was kept on the statute books and became known as "retained EU law". **Chronology of the Bill:** On 22 September 2022 the Government presented the Retained EU Law (Revocation and Reform) Bill 2022 to Parliament. The Government's press release explained that, "…having mapped where EU-derived legislation sits on the UK statute book, [the Government] is bringing forward this Bill in order to fully realise the opportunities of Brexit, and to support the unique culture of innovation in the UK." • The Bill provides that EU-derived secondary legislation and retained direct EU legislation will expire on 31 December 2023 unless otherwise expressly preserved by ministerial order. This would include many regulations that impact employment practices, such as the Working Time Regulations 1998, Agency Worker Regulations 2010 and Fixed Term Employee Regulations 2002. • Before 31 December 2023, Government departments and the devolved administrations will determine which retained EU law can expire, and which needs to be preserved and incorporated into domestic law. They will also decide if retained EU law needs to be codified as it is preserved, in order to preserve policy effects the Government intends to keep. • Any retained EU law remaining in force after the sunset date will be assimilated in the domestic statute book, by the removal of the special EU law features previously attached to it. This means that the principle of the supremacy of EU law, general principles of EU law, and directly effective EU rights will also end on 31st December 2023. • The Bill includes an extension mechanism for the sunset of specified pieces of retained EU law until 2026. Should it be required, this will allow departments additional time where necessary to assess whether some retained EU law should be preserved. • The Bill would also end the supremacy of EU law and make it easier for courts and tribunals to depart from existing EU-derived domestic case law. The Bill is far reaching and has huge implications for employment law in the UK. Areas such as TUPE, paid annual holiday, the 48-hour working week, part-time and fixed-term worker regulations and the agency worker regulations will all be impacted by the Bill. It is not yet known what the Government proposes in relation to these	31 December 2023.

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		specific areas. The relevant retained EU laws must now be incorporated into domestic law in time or risk being lost, but the Government may take this opportunity to reform the law and to bring about change on certain key issues, for example, in the calculation of holiday pay or the ability to change terms and conditions of employment following a TUPE transfer. This will have a significant impact on businesses because of the immediate uncertainty over employment law reforms which may now be on the horizon. One point to note is that, under the European Trade and Cooperation Agreement, if changes to UK employment law have a material effect on trade and investment or reduce employment rights, the UK may face tariffs from the EU. It remains to be seen what effect the sanction of such enforcement measures will have on the scope of reforms. The Bill has been progressing through Parliament: • On 17 October 2022, the House of Commons published this research briefing about the Bill. • On 21 November 2022, the Regulatory Policy Committee published its opinion on the Government's regulatory impact assessment for the Bill and red-rated the impact assessment as 'not fit for purpose'. • On 24 November 2022, the Employment Lawyers Association, the Institute of Directors, and various other organisations including the Chartered Institute of Personnel and Development, issued a letter to the Business Secretary, Grant Shapps, calling for the Bill to be withdrawn. The letter states the Bill could cause significant confusion and disruption for businesses, working people and environmental groups due to the sunsetting of thousands of pieces of retained EU legislation. The organisations add that 'decades' of case law would be impacted, the interpretation of the law would become uncertain, and that the UK also risks being in breach of the Trade and Co-operation Agreement with the EU. • On 15 December 2022, the Government published it regulatory impact assessment for the Bill. • On 9 January 2023 the House of Commons Library published its paper summarising the main developments in relation to the Bill. • On 2 February 2023 the House of Lords Delegated Powers and Regulatory Reform Committee published a report on the Bill. • On 23 February 2023 the Scottish Government announced that MSPs had voted to withhold consent for the Bill. • On 9 March 2023 a revised text of the Bill was published as amended in committee stage in the House of Lords. • The Bill has reached the report stage in the House of Lords which is scheduled for 19 April 2023. On 10 May 2023, the Government **tabled amendments to the Bill** including:	

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		• the proposed change to the sunset clause 1. Instead of automatically revoking EU derived secondary legislation and retained direct EU legislation at the end of 2023, clause 1 would revoke only the legislation set out in the Government's new revocation Schedule which contains around 600 pieces of legislation. This is intended to provide certainty for business. • a proposed new power that a relevant national authority can, before the end of October 2023, exclude specified legislation listed in the new Schedule from revocation under clause 1. • the removal of the power to extend the sunset clause revocation date for specified instruments or descriptions of legislation • The Bill would still amend the European Union (Withdrawal) Act 2018 to end the principle of the supremacy of EU law, abolish general principles of EU law, change the role of the UK courts in the interpretation of retained EU law and repeal s.4 of the European Union (Withdrawal) Act 2018 at the end of 2023 which includes directly effective rights and obligations derived from EU treaties and EU directives (expected only to comprise a small number). The Bill has reached its third reading in the House of Lords scheduled for 22 May 2023.	
5.	TBC	**Consultation on measures to ban or impose mandatory compensation for non-compete clauses** Driven by the need to be more competitive in the post-Covid-19 world, the Government consulted in February 2021 on measures to reform post-termination non-compete clauses in contracts of employment. Broadly, two measures to reform post-termination non-compete clauses in contracts of employment were proposed: (1) To **impose mandatory compensation for the post-employment period** that the employer wishes the employee to be restricted (similar to other jurisdictions such as France, Germany and Italy). Two complementary measures (transparency and a maximum period of non-compete), were also being considered alongside this option. (2) Alternatively, the other proposed measure was to **ban non-compete clauses** altogether (as is the case in California) The consultation closed on 26 February 2021. The Government has now published its response. It proposes to introduce legislation limiting the length of non-compete clauses in employment contracts to three months. The response sets out: • the proposed three-month limit will apply to non-compete clauses only, it will not apply to other types of restrictive covenants such as non-solicitation or non-dealing clauses;	Legislation to be introduced "when Parliamentary time allows"

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		• the proposed limit will only apply to employment contracts and limb (b) workers' contracts. It will not extend to wider workplace contracts such as partnership agreements, LLP agreements and shareholder agreements; • the Government intends that common law principles will still apply to non-compete clauses of three months or less. The starting point for restrictive covenants is that they will be unenforceable unless they are reasonable and go no further than necessary to protect legitimate business interests; • there is no mention of how the statutory limit would apply retrospectively to existing contracts. The Government has said that it will introduce legislation "when Parliamentary time allows".	
6.	TBC	**Consultation on new measures on Working Time, Holiday Pay and TUPE** On 10 May 2023, the Government published a policy paper, Smarter Regulation to Grow the Economy setting out proposed reforms to reduce working hours recording requirements under the Working Time Regulations, simplify holiday pay and leave, to exempt smaller businesses from consulting with employee representatives under TUPE and to impose a three-month time limit on non-compete clauses in employment contracts (see entry above). The Government has now published a consultation on reforms to the Working Time Regulations, holiday pay and TUPE. The proposals include: • removing any legal requirement for businesses to keep a record of the daily working hours of their workers. The Government is seeking evidence from employers on recording working hours; • creating a single annual leave entitlement of 5.6 weeks leave (rather than the current 4 weeks EU leave and 1.6 weeks domestic leave). The overall statutory entitlement would not change and employers would still be able to choose whether or not to include bank holidays in the statutory entitlement; • inviting views on clarifying the minimum rate of holiday pay and what counts as "normal remuneration". • a new method for calculating holiday entitlement for workers in their first year of work together with revised guidance to provide clarity for employers;	Consultation closes on 7 July 2023.

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		• allowing rolled up holiday pay to be paid at 12.07% of a worker's pay on each payslip for workers with regular and irregular hours; • allowing employers to consult directly with employees where there are no employee representatives in place in a TUPE transfer in situations where either there are fewer than 50 employees in the business or where the transfer affects fewer than 10 employees whatever the size of the business. The consultation closes on 7 July 2023.	
7.	Strikes (Minimum Service Levels) Bill	**Strikes (Minimum Service Levels) Bill: to provide minimum service levels for key sectors** On 10 January 2023, the Government published the **Strikes (Minimum Service Levels) Bill** which replaces the Transport Strikes (Minimum Service Levels) Bill previously published in October 2022. The Bill will enforce minimum service levels in a number of sectors including health, education, fire and rescue and transport services as well as border security and decommissioning nuclear installations and management of radioactive waste and spent fuel. The new Bill is less complex than the Transport Strikes Bill and has done away with minimum service agreements negotiated between employer and unions or determinations to be made by the Central Arbitration Committee. Instead, it will provide for minimum service levels to be set by the Government following consultation and the Government intends to consult first with fire, ambulance and rail services. It hopes not to have to use the powers for other sectors, rather it expects parties in those sectors to reach a voluntary agreement on minimum service levels during strike action. When a union gives an employer notice of a strike in relation to a service where minimum service levels are set, the employer may give a "work notice" to the union. The notice will identify the people required to work during the strike to ensure that minimum levels of service are provided and specify the work they will be required to carry out during the strike. If the union fails to take reasonable steps to ensure that the people identified in the notice do not take part in the strike, the union will lose its protection from an action in tort by the employer. There has been much opposition to the Bill from unions and Labour has said it will repeal the legislation if it wins the next election. The new Bill was published on 10 January 2023 and is currently progressing through Parliament. Amendments have been introduced but they are all opposed by the Government including that:	The Bill is currently making its way through Parliament.

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		• The government may not exercise the power to specify any minimum service levels until such powers have been scrutinised by a committee of each House of Parliament, following a consultation. • If an employee fails to comply with a work notice, this would not be considered a breach of contract or lawful grounds for dismissal or any other detriment. • The provisions enabling employers to seek an injunction or damages against a trade union which fails to take reasonable steps to ensure employees comply with work notices would be removed from the Bill. • The Bill would be limited to England only and would not apply in Scotland or Wales One further amendment, unopposed, would add to the factors that an employer must not take into account when deciding which employees should be given an work notice. These amendments would leave an employer with no effective remedy against a trade union or individual employees if employees fail to provide the minimum service levels during a strike as specified in a work notice. The Bill has reached the final stages of its passage through Parliament and is at the consideration of amendments stage.	
8.	Various Private Members' Bills (there is no longer an Employment Bill "on the cards per se") – see *Summary and Impacts*. Instead, the Government is now sponsoring six Private Members Bills containing proposals on the same lines as those contained within the Employment Bill	**New Employment Bill** In the Queen's Speech on 19 December 2019, the Government announced that a new Employment Bill would be brought forward, to seek to protect and enhance workers' rights post-Brexit and promote fairness in the workplace. The main elements included: 1. Creating a new, single enforcement body to offer better protection for workers; 2. Ensuring that workers receive the tips left for them in full; 3. Introducing a new right for all workers to request a more predictable contract; 4. Extending redundancy protections to prevent discrimination against women and new parents; 5. Allowing parents to take extended leave for neonatal care; 6. Introducing an entitlement to one week's leave for unpaid carers; and 7. Subject to consultation, making flexible working the default unless employers have good reason not to. However, the Employment Bill was not mentioned in the Queen's Speech on 11 May 2021 nor on 10 May	Between June 2022 and February 2023, the Government confirmed its backing for six new Private Members Bills which would introduce measures previously contained in the Employment Bill as follows: • the **provision of neonatal care leave and pay**; • the **allocation of gratuities, service charges and tips to go to staff in full** (now received Royal Assent); • amending the **flexible**

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		2022. It had been reported that it will be introduced "*when the time is right*". However, between June and November 2022, the Government confirmed its backing for several Private Members Bills including the provision of neonatal care leave and pay, the allocation of gratuities, service charges and tips to go to staff in full, the Protection from Redundancy (Pregnancy and Family Leave) Bill, the Carer's Leave Bill, the Employment Relations (Flexible Working) Bill and the Workers (Predictable Terms and Conditions) Bill. While Private Members' Bill usually do not become law, with Government backing, it is likely that these Bills may find their way onto the statute book. On 20 December 2022, the Government confirmed that it is not currently progressing plans for **a single enforcement body** to enforce workers' rights including holiday pay, statutory sick pay and labour exploitation. Although there may be time to address the issue in the remaining two years of Parliament, for the time being the Government is focussing on ensuring that the existing enforcement bodies operate as efficiently as possible. The proposal for a single enforcement body had been to consolidate three existing labour market enforcement bodies (HMRC's National Minimum Wage Enforcement, Employment Agency Standards Inspectorate and the Gangmasters Labour Abuse Authority).	**working application** process; • **extending redundancy protections to prevent discrimination against women and new parents**; and • **introducing an entitlement to one week's leave for unpaid carers**. • **introducing the right to request a predictable work pattern for workers and agency workers.**
9.	Right to request flexible working (regulations will be required) Other measures will be legislated for in the Employment Relations (Flexible Working) Bill	**Changes to the Right to Request Flexible Working Legislation** On 5 December 2022, the Government announced its intention to introduce changes to the right to request flexible working legislation in response to the last year's consultation which closed in December 2021. The Government will take forward the following measures: • Making the right to request flexible working a day 1 right, removing the current 26 week qualifying period. • Where it cannot accommodate a request to work flexibly, introducing a new requirement for employers to consult with the employee to explore alternative options before rejecting their flexible working request. • Allowing 2 statutory requests in any 12-month period (rather than the current one). • Requiring employers to respond to a request within 2 months (rather than the current three). • Removing the existing requirement that the employee must explain what effect, if any, the change applied for would have on the employer and how that effect might be dealt with. The Government will retain the current list of business reasons for rejecting flexible working requests without any changes. The day one right to request flexible working will be introduced through secondary legislation "when parliamentary time allows". The other measures require primary legislation and are contained in The	The Bill is currently progressing through Parliament.

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		Employment Relations (Flexible Working) Bill, a Private Member's Bill, which is currently progressing through Parliament and has Government backing. The Government has also committed to non-legislative action, including: • developing guidance to raise awareness and understanding of how to make and administer temporary requests for flexible working; and • launching a call for evidence to better understand how informal flexible working operates in practice.	
10.	Carer's Leave Bill	**Carer's Leave Bill** The Government has announced its backing for the Carer's Leave Bill, a Private Members' Bill currently making its way through Parliament. The Bill will introduce a new statutory right of at least one week's unpaid leave for unpaid carers per year. It will be a day one right with employees able 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. The carer will be protected from suffering any detriment arising from it and any dismissal related to exercising the right to carer's leave will be automatically unfair. Regulations will be needed which will set out the exact amount of leave which an eligible employee can take, but it looks likely to be one week. The Bill will receive Royal Assent on a date yet to be scheduled.	The Bill will receive Royal Assent on a date yet to be scheduled
11.	Protection from Redundancy (Pregnancy and Family Leave) Bill	**Protection from Redundancy (Pregnancy and Family Leave) Bill** The Government is backing the Protection from Redundancy (Pregnancy and Family Leave) Bill, a Private Members' Bill currently making its way through Parliament. The Bill provides that expectant mothers will receive greater protection from redundancy during pregnancy and new parents will have extended protections when they return from maternity, adoption and shared parental leave. The Bill proposes to extend the period of protection from redundancy from the moment they inform their employer of their pregnancy until 18 months after the birth. Parents taking adoption or shared parental leave will also be protected while on leave and for a period of 18 months after the birth. The Bill will receive Royal Assent on a date yet to be scheduled	The Bill will receive Royal Assent on a date yet to be scheduled.
12.	Neonatal Care (Leave and Pay) Bill	**Neonatal Care (Leave and Pay) Bill** The Government has announced it is backing the Neonatal Care (Leave and Pay) Bill, a Private Members' Bill. The Bill will allow parents each to take up to 12 weeks of paid leave, in addition to other leave entitlements such	The Bill is currently progressing through Parliament.

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		as maternity and paternity leave, so that they can spend more time with their baby who is receiving neonatal care (having been born prematurely or sick) in a hospital or other agreed care setting. It will be a day one right for employees and will apply to parents of babies admitted to hospital up to the age of 28 days and who have a continuous stay in hospital of seven full days or more. The Bill is currently progressing through Parliament.	
13.	Employment (Allocation of Tips) Act 2023	**The Employment (Allocation of Tips) Bill** The Employment (Allocation of Tips) Bill has received Royal Assent and is expected to come into force in May 2024. It provides a requirement that employers pass all tips to staff in full without deductions, save for those required by tax law. Employers will also be required to have a written policy on tips and to distribute them in a fair, transparent and consistent way and to keep records of how tips have been dealt with for three years from the date received.	Expected to come into force in May 2024.
14.	Workers (Predictable Terms and Conditions) Bill	**Workers (Predictable Terms and Conditions) Bill** The Government has announced that it is backing the Workers (Predictable Terms and Conditions) Bill, another Private Members' Bill. One of the key recommendations of the Taylor Review 2017 was the introduction of measures to address the problem of "one-sided flexibility" where a worker has no guarantee of work but is expected to be available at very short notice when required. In 2019 the Government consulted on proposals from the Low Pay Commission which included a right to request a more predictable contract. The Government has yet to publish its response. If passed, this Bill will amend the Employment Rights Act 1996 to give workers and agency workers the right to request a predictable work pattern where there is a lack of predictability as regards any part of their work pattern and the change relates to their work pattern and where the purpose in applying for the change is to get a more predictable work pattern. Fixed term contracts of 12 months or less are presumed to lack predictability. The Bill allows for two applications to be made in a twelve-month period and the government has suggested that there will be a service requirement (expected to be 26 weeks) to access the right. Employers would be able to reject applications on statutory grounds and workers and agency workers will have the right not to suffer a detriment short of dismissal for making an application. It would also be automatically unfair to dismiss an employee for making an application. The Bill is currently making its way through Parliament.	The Bill is currently making its way through Parliament.

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15.	The Worker Protection (Amendment of Equality Act 2010) Bill	**Harassment: A new mandatory duty to prevent harassment in the workplace** On 21 July 2021, the Government published its response to the 2019 consultation on workplace sexual harassment in which it confirmed it would introduce a new duty on employers to prevent sexual harassment and third party harassment in the workplace. The Government also said it would look closely at the possibility of extending time limits for claims under the Equality Act 2010 from three to six months. The Government is now supporting **The Worker Protection (Amendment of Equality Act 2010) Bill** (a Private Members' Bill) which is being progressed through Parliament. Under this Bill, an employer will be treated as harassing an employee (engaging in unwanted conduct related to a relevant protected characteristic) when a third party, such as a customer or client, harasses an employee in the course of their employment and the employer has failed to take all reasonable steps to prevent that harassment. Other than in cases of sexual harassment, the Bill has been amended so that it qualifies circumstances when an employer will not be taken to have failed to take all reasonable steps to prevent harassment. That is, where the harassment involves a conversation in which the claimant is not a participant (or a speech which is not aimed specifically at the claimant), the conversation (or speech) contains the expression of an opinion on a political, moral, religious or social matter, the opinion expressed is not indecent or grossly offensive, and the harassment is not intentional. Employers will be under a new duty to take all reasonable steps to prevent sexual harassment of their employees in the course of their employment. Breach of this duty may be enforced by the Equality and Human Rights Commission (EHRC) under its existing enforcement powers and, where a claim for sexual harassment has been upheld, by an employment tribunal. The tribunal may order an uplift of up to 25% of any compensation awarded for sexual harassment if the tribunal considers that the duty to take reasonable steps to prevent sexual harassment has been breached. The Bill is currently progressing through Parliament.	The Worker Protection (Amendment of Equality Act 2010) Bill is currently progressing through Parliament.
16.	The UK's bonus cap rules will need to be varied or revoked	**Removal of the cap on bankers' bonuses** On 23 September 2022, the former Chancellor, Kwasi Kwarteng, announced the removal of the current cap to bankers' bonuses, which was subsequently published in The Growth Plan 2022. Currently, the bonus cap limits remuneration of certain bank staff to 100% of their fixed pay (or 200% with shareholder approval). Clause 4.9 of the Growth Plan states that, as pay in bonuses aligns the incentives of individuals with those of the bank, in turn supporting growth in the UK economy, the Prudential Regulation Authority (**PRA**) will remove the current cap.	TBC. The joint PRA and FCA consultation regarding removal of the cap closed on 31 March 2023.

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		The UK's bonus cap rules (that implement the Capital Requirements Directive (**CRD)**) are in the *Remuneration* and *Remuneration Code* parts of the PRA Rulebook and the Financial Conduct Authority (**FCA**) Handbook. These rules will need to be varied or revoked to remove the 100% and 200% bonus caps. On 19 December 2022, the PRA and the FCA jointly published a consultation paper setting out their proposed rule changes to remove the existing limits on the bonus cap. They explain that the bonus cap does not limit total remuneration, but limits the proportion of remuneration that can be adjusted by risk and performance measures. The proposed changes are designed to strengthen the effectiveness of the remuneration regime by increasing the proportion of compensation that can be subject to the incentive setting tools within the framework. The consultation closed on 31 March 2023.	
17.	Bill of Rights 2022-2023	**New UK Bill of Rights (to replace the Human Rights Act 1998)** In December 2021, the Government published a consultation, *Human Rights Act Reform: A Modern Bill of Rights* to consult on reforming the existing Human Rights Act 1998 and replacing it with a Bill of Rights. The consultation closed on 8 March 202 and the Government responded on 12 July 2022 by introducing the Bill of Rights Bill into the House of Commons on 22 June 2022, with the aim of repealing the Human Rights Act 1998 and creating a new domestic human rights framework around the ECHR, to which the UK will remain a signatory. On 7 September 2022, it was reported that the Bill of Rights Bill 2022-23 had been dropped by the new Government headed by Liz Truss and would not progress to its second reading, which had been scheduled to take place on 12 September 2022. However, on 7 November 2022, it was reported that the Bill of Rights Bill 2022-23 will resume its passage through Parliament "within weeks". It was understood to have been reinstated under the Government headed by the new Prime Minister, Rishi Sunak. On 8 May 2023 it was again reported that the Bill would be dropped. It is unclear whether the Bill will progress any further.	It is unclear whether the Bill will progress any further
18.	Future of Work Review	**Future of Work Review: to focus on key issues and challenges for the labour market for the future** On 12 May 2022 the Government announced that Matt Warman MP will lead the Future of Work review to be conducted over the spring and summer of 2022. The purpose of the review is to build on existing Government commitments (including as set out in the Taylor Review) and to create a detailed assessment on key issues facing the labour market. It will then provide a set of recommendations for Government to consider. The Future of Work Review will be in 2 parts:	Phase 1 completed on 31 August 2022. No timetable yet for Phase 2

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		1. The first phase - a high level assessment of key strategic issues on the future of work - is now complete (see Matt Warman MP's Response here). The Government will now look into 4 key areas: a) AI and automation: Considering what more can be done to (i) promote the UK to continue to be a world leader in AI and (ii) map and support areas more susceptible to the pace of change. b) Skills: Supporting initiatives to enable a more agile approach to the approval and delivery of training. c) Place and flexibility: Considering the rights of those who wish to work flexibly and develop a better understanding of what it means for different groups within the workforce. d) Workers' Rights: Encouraging transparency on what business now expect from their workers and when, and working to establish best practice and set clear expectations. 2. There is no indication yet of when phase 2, a more detailed assessment of selected areas of focus from the first phase, will be delivered.	
19.	The Judicial Review and Courts Act 2022.	**Employment tribunals and EAT: consultation on panel composition and new procedure rules** Provisions within the Judicial Review and Courts Act 2022 (**JRCA**) will establish a new online procedure for civil proceedings and an Online Procedure Rule Committee (**OPRC**) that will be able to make new Online Procedure Rules (**OPR**) effective in courts and tribunals including the employment tribunals and the EAT. The JRCA received Royal Assent on 28 April 2022 and the relevant provisions are to be brought in by regulations in due course. The Employment Tribunal Rules 2013 and the Employment Appeal Tribunal Rules 1993 remain in place until replaced. One of the provisions of the JRCA is that it transfers responsibility for the rules of procedure in the employment tribunals and the EAT from BEIS to the Tribunal Procedure Committee (**TPC**) which was anticipated to commence in early 2023. The Senior President of Tribunals (SPT) launched a consultation on panel composition in the employment tribunals and EAT. In the employment tribunal it is suggested that the SPT should decide on whether the panel consists of one, two or three panel members. It suggests that cases will usually be heard by an employment judge sitting alone and there should be a reduction in cases in which non-legal panel members are used. However, a panel of two employment judges could be appropriate in complex cases or to help with judges' development.	Regulations will be required. The transfer of responsibility for rules of procedure in the employment tribunals and the EAT from BEIS to the TPCs was anticipated to commence in early 2023.

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
		In addition, the consultation proposes to remove the current discretion to allow a panel in a preliminary hearing, meaning that all preliminary hearings will be conducted by an employment judge sitting alone. It proposes that the current system in the EAT should continue. The consultation closed on 27 March 2023.	
20.	The Police, Crime, Sentencing and Courts Act 2022	**Rehabilitation of offenders** Under section 193 of the Police, Crime, Sentencing and Courts Act 2022 (**PCSCA**) the time it takes for certain convictions to become 'spent' so that they are no longer automatically disclosed on employment checks will be reduced so that: 1. custodial sentences of up to one year become 'spent' after 12 months without re-offending; 2. convictions between one to four years become 'spent' after four crime-free years; and 3. sentences of over four years do not need to be automatically disclosed to employers where there has been a seven-year period of rehabilitation. The changes do not apply to convictions relating to serious sexual, violent or terrorist offences for which the sentence was four years or more. The PCSCA received Royal Assent on 28 April 2022 and the relevant provision is to be brought in by regulations in due course.	Regulations will be required.
21.	TBC	**Menopause discrimination in the workplace** In July 2021 the House of Commons Women and Equalities Committee (**WEC**) launched an inquiry seeking views on the extent of discrimination faced by menopausal people in the workplace and how Government policy and workplace practices can better support those experiencing the menopause. On 28 July 2022, the WEC published a report, advocating that employers' lack of support for menopausal symptoms is pushing "highly skilled and experienced" women out of work, with impacts on the gender pay gap, the pension gap and female representation in senior leadership positions. The report asks the Government to: • amend the Equality Act 2010 (**EqA 2010**) to introduce menopause as a protected characteristic, and • include a duty for employers to provide reasonable adjustments for menopausal employees. However, these calls for legislative reform are unlikely to be taken forward after the Government confirmed in a letter to Caroline Nokes MP in May 2022 that it does not intend to amend the EqA 2010 to add the menopause	

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
		as a protected characteristic and that it has no plans to implement the combined discrimination provision in section 14 of the EqA 2010, as this would introduce further complexity and costs for employers. Additionally: • On 3 February 2022, the Government launched a UK Menopause Taskforce to look at tackling issues surrounding the menopause. The taskforce will meet every 2 months for an initial period of 18 months, with future meetings scheduled by theme, including healthcare provisions, education and awareness, menopause in the workplace and research evidence and data; and • On 18 July 2022, the Government responded to recommendations from a commissioned independent report through the 50PLUS Roundtable on Menopause and the Workplace published in November 2021, confirming an intention to introduce change in relation to menopause support in key areas of Government policy, employer practice, and wider societal and financial change. • On 12 October 2022, the All-Party Parliamentary Group on Menopause published a report on the impacts of menopause and the case for policy reform. The report recommends that the government must: (1) Co-ordinate and support an employer-led campaign to raise awareness of menopause in the workplace and to help tackle the taboo surrounding menopause and work; and (2) Update and promote guidance for employers on "best practice" menopause at work policies and supporting interventions. This should be tailored to organisations of different sizes and resources to ensure it is as effective as possible and include the economic justification and productivity benefits of such interventions. • On 24 January 2023 the Government published its response to the WEC's *Menopause and the workplace* report rejecting many of the recommendations including the commencement of the combined discrimination provision on s14 Equality Act 2010 and the recommendation for a consultation on making menopause a protected characteristic. • On 28 February 2023, the Labour Party announced that if in government It will introduce a requirement for employers with over 250 employees to publish and implement a menopause plan setting out how they are supporting employees experiencing menopause symptoms together with government guidance for employers on how best to support their employees.	
22.	Fertility Treatment (Employment Rights) Bill 2022-2023	**Fertility in the workplace** A Private Members' Bill to require employers to allow employees to take time off from work for appointments for fertility treatment. The first reading took place in the House of Commons on 20 June 2022. The second reading started on 25 November 2022 but was interrupted. The Bill is not expected to progress.	The Bill is not expected to progress.

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
23.	Consultation on Holiday entitlement for part-year and irregular hours workers	**Holiday Entitlement: Government consultation on holiday entitlement for part-year and irregular hours workers** On 12 January 2023 the Government launched a consultation over a proposal to make holiday entitlement under the Working Time Regulations 1998 proportionate to time worked. This consultation comes in the wake of the Supreme Court's decision in *Harpur Trust v Brazel {2022]* which held that workers on permanent contracts who only work for part of the year are entitled to 5.6 weeks' paid holiday per year, just like workers who work all year. The Government proposes to introduce a 52 week holiday entitlement reference period for part-year workers and workers with irregular hours, based on the proportion of time spent working over the previous 52 week period (including weeks in which no work was done). Holiday entitlement would be calculated in hours at the start of a leave year, as 12.07% of the hours worked in the previous 52 weeks ,with an accrual system applying for the first year of employment. For workers on irregular hours, it proposes that a day's holiday should be based on a "flat average day", calculated as the average length of working day for that worker over the 52-week reference period used to calculate annual leave entitlement. The consultation closed on 9 March 2023 and there is no indication of a timescale for any proposed legislation as yet.	There is no indication of a timescale for any proposed legislation as yet.
24.	National Disability Strategy	**National Disability Strategy: removing barriers faced by disabled people in all aspects of their lives including work and business** On 28 July 2021 the Government published a National Disability Strategy setting out various steps that it will take to remove barriers faced by disabled people in all aspects of their lives including work, justice, politics, transport, housing and leisure services. It also committed to consult on voluntary and mandatory reporting of disability in the workforce by large employers. The consultation ran until 25 March 2022 seeking views on how employers with more than 250 employees might be encouraged to collect and report statistics about disability to make their workforces more inclusive and exploring how Government and employers can make workplaces more inclusive for disabled people and increase transparency. The consultation closed on 25 March 2022. The Government's response was expected in the summer of 2022, but is reported as "not imminent". In January 2022, the High Court ruled that the strategy is unlawful, based on a case brought by four disabled people regarding the consultation process (see *Future Key Cases* below). The case is due to be heard by the Court of Appeal by 22 May 2023. In June 2022, the Government announced that parts of the strategy will be paused while the legal case is pursued.	The consultation closed on 25 March 2022. The Government's response is awaited – but is not expected imminently.

FUTURE KEY CASES

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
1.	Climer-Jones v Cardiff and the Vale University Local Health Board	**Whistleblowing protection: Compensation and remedies** An employment tribunal found that the claimant had been subject to unlawful detriments on the grounds of having made protected disclosures and was unfairly dismissed, contrary to s47B and s103A of the Employment Rights Act 1996. The tribunal commented that this was one of the most serious and sustained cases of systemic bullying it had seen and found that, in addition to suffering several detriments, Ms Climer-Jones had experienced the highest degree of hurt feelings, distress and impact on her family life. The case was heard by the EAT on 29 April 2022. Awaiting judgment.	Heard by the EAT on 29 April 2022. Awaiting judgment.
2.	Chief Constable of the Police Service of Northern Ireland and another v Agnew and others	**Holiday Pay: Whether a series of deductions is broken by three-month gap** Contrary to the EAT's decision in *Bear Scotland v Fulton*, the Northern Ireland Court of Appeal held in 2019 that a "series" of unlawful deductions from holiday pay would not necessarily be interrupted by gaps of more than three months. Heard by the Supreme Court on 14 and 15 December 2022.	Heard by the Supreme Court on 14 and 15 December 2022. Awaiting judgment.
3.	Accattatis v Fortuna Group (London) Ltd	**Covid-19: Did Covid-19 concerns justify a refusal to attend work?** The tribunal held that Covid-19 concerns alone may not justify a refusal to attend work under s.100(1)(e) of the Employment Rights Act 1996 if the employers have reasonably tried to accommodate the employees' concerns and reduce transmission risk. Permission to appeal to the EAT has been sought. Rule 3(10) hearing was heard by the EAT on 9 February 2023.	Permission to appeal to the EAT has been sought. Rule 3(10) hearing was heard by the EAT on 9 February 2023.
4.	McClung v Doosan Babcock Ltd and others	**Philosophical Belief: Is supporting Rangers Football Club a protected philosophical belief?** An employment tribunal held that supporting a football club does not amount to a protected philosophical belief under the Equality Act 2010 (EqA). The Claimant, a supporter of Rangers FC for 42 years, believed that it was a way of life and as important to him as attending church for religious people. Albeit that the belief was genuinely held, the remaining *Grainger* criteria were not met – explanatory notes to the EqA provides that adherence to a football team is not a belief capable of protection; support of a football club is akin to a lifestyle choice not a belief as to a weighty or substantial aspect of human life; lacked cogency, cohesion and importance; did not	Heard by the EAT on 2 March 2023. Awaiting judgment.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		invoke the same respect in a democratic society as say ethical veganism. The appeal to the EAT was heard on 2 March 2023.	
5.	R (on the application of Palmer) v Northern Derbyshire Magistrates' Court	**Collective redundancies: Can administrators be prosecuted personally for failing to notify Secretary of State of collective redundancies?** Mr Palmer brought a judicial review of the decision to prosecute him as an administrator under TULR(C)A 1992, s 194, arguing that administrators should not fall within the definition of section 194(3) of those potentially criminally liable — 'any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity' — as administrators' authority derives from the Insolvency Act, not the company, making their position distinguishable. In November 2021 the High Court held that administrators may be liable personally for the offence in exactly the same way as company directors. The case was heard in the Supreme Court on 8 March 2023.	Permission to appeal to the Supreme Court was granted on 12 August 2022. The case was heard on 8 March 2023.
6.	Associated Unions v Secretary of State for Business, Energy and Industrial Strategy	**Judicial Review of the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022** The High Court has granted permission for a judicial review of the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022 which allow agency workers to fill in for striking workers. The TUC, along with 11 trade unions, as well as Unison and NASUWT have issued proceedings in the High Court seeking a judicial review of the Government's new regulations which they say "undermine the right to strike". The judicial review is being sought on the basis that the then Secretary of State failed to consult unions, with the unions critical of ministers for using what they say is out of date findings from a 2015 consultation and also on the basis that the new measures are contrary to Article 11 of the European Convention on Human Rights, namely the right to freedom of association. The case was heard on 3 and 4 May 2023.	The High Court has granted permission for a judicial review of the regulations. Heard on 3 and 4 May 2023.
7.	Independent Workers Union of Great Britain v Central Arbitration Committee and another	**Employment status and trade union freedom right under Article 11 ECHR** The Court of Appeal held that Deliveroo riders do not fall within the scope of the trade union freedom right under Article 11 of the European Convention on Human Rights (**ECHR**) because there is no employment relationship between them and Deliveroo. Article 11 of the ECHR concerns the freedom of assembly and association including the right to form and to join trade unions for the protection of one's interests. A trade union may apply to the Central Arbitration Committee (**CAC**) for statutory recognition in respect of a group of workers for	Permission to appeal to the Supreme Court was granted on 15 July 2022. Case was heard in the Supreme Court on 25 and 26 April 2023.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		union entitlement to conduct collective bargaining with the employer on pay, hours and holidays on behalf of the workers. The Court of Appeal held that the CAC was entitled to conclude that the Deliveroo riders were not in an employment relationship with Deliveroo for the purpose of Article 11, given the CAC's finding that riders were under no obligation to provide services personally and had a virtually unlimited right of substitution. Permission to appeal to the Supreme Court was granted on 15 July 2022 and the case was heard by the Supreme Court on 25 and 26 April 2023.	
8.	R (Binder and others) v Secretary of State for Work and Pensions	**National Disability Strategy unlawful due to inadequate consultation** The High Court has declared that the National Disability Strategy is unlawful due to inadequate consultation. The court found that the Secretary of State had chosen to consult about the strategy and therefore common law consultation duties applied. The UK disability survey, which was open to the public between January and April 2021 and through which the views of disabled people were purportedly sought, did not comply with these duties. In particular, the survey did not allow for intelligent consideration and response to the consultation. The case is due to be heard by the Court of Appeal by 28 June 2023.	The case is due to be heard by the Court of Appeal on 28 June 2023.
9.	HMRC v Professional Game Match Officials Ltd	**Employment status: Are match referees employees?** The First Tier Tribunal (**FTT**) allowed the taxpayer's appeal and found that referees were not employees. HMRC appealed to the Upper Tribunal. The Upper Tribunal dismissed HMRC's appeal and found that there was insufficient mutuality of obligation in the arrangements, and therefore no error of law in the FTT's conclusion. HMRC appealed to the Court of Appeal (**CA**). The CA agreed with the Upper Tribunal's decision that there was no overarching contract of employment with the referees but considered that on each assignment (i.e. a match day) there could be a contract of employment. The CA found the ability of either side to cancel an engagement before the match did not negate the necessary mutuality of obligation, holding that the fact that a contract permits either side to terminate the contract before it is performed is immaterial. HMRC appealed to the Supreme Court and permission to appeal was granted by the Supreme Court on 9 August 2022.	Due to be heard in the Supreme Court on 26-27 June 2023.
10.	Olsten (UK) Holdings Ltd v Adecco Group European Works Council	**European Works Councils: Failure to convene meeting to inform and consult about collective redundancies** The EAT imposed a penalty of £20,000 for an employer's failure to convene an extraordinary meeting to inform and consult its EWC about collective redundancies. Agreeing with the Central	Due to be heard by the Court of Appeal on 13 June 2023.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		Arbitration Committee, the EAT held it was not necessary for collective redundancies in two countries to share a common rationale to be transnational. The EAT also imposed a £5,000 penalty for the employer's failure to inform the EWC of the most recent business sales performance data on a "country-by-country" basis within the scope of its EWC Agreement. The case is due to be heard by the Court of Appeal on 13 June 2023.	
11.	Kocur v Angard Staffing Solutions Ltd and anor	**Agency Workers: Can agency workers been employed on the same terms as directly recruited employees?** The Court of Appeal upheld the EAT's decision that Regulation 13(1) of the Agency Workers Regulations 2010 (SI 2010/93), read in conjunction with Article 6 of the Temporary Agency Workers Directive (EC) 2004/104, only entitled the appellant agency worker to be notified of appropriate jobs on the same basis as directly recruited employees. It dismissed the claim that these Regulations entitle agency workers to apply for and/or be considered for such notified jobs on the same terms as directly recruited employees.	Due to be heard in the Supreme Court on 7 December 2023.
12.	Ryanair DAC v Morais	**Trade Unions: are striking employees protected from detriment under TULRCA and the Blacklisting Regulations?** The EAT held that section 146 of TULRCA, which protects workers from detriment connected with trade union activities, confers protection on workers who take union industrial action, regardless of whether such action is protected industrial action. The EAT also held that striking workers are protected from detriment under the Employment Relations Act 1999 (Blacklists) Regulations 2010. In reaching its decision, the EAT built on and applied the reasoning in *Mercer v Alternative Futures Ltd* (see above) which is also subject to appeal. The case was stood out by the Court of Appeal on 11 April 2022 and will be stayed until the Supreme Court has given a decision on the permission to appeal sought in the case of *Mercer v Alternative Future Group Ltd.*	Stood out by the Court of Appeal on 11 April 2022. Stayed until the Supreme Court has given a decision on the permission to appeal sought in the case of *Mercer v Alternative Future Group Ltd.*
13.	Mercer v Alternative Future Group Ltd	**Trade Unions: whether protection from detriment for participating in industrial action should be read into TULRCA.** The EAT held that a lack of protection from detriment for having participated in strike action under s.146 of the Trade Union and Labour Relations (Consolidation) Act 1992 (**TULRCA)** was a breach of Article 11 of the European Convention on Human Rights and that such protection should therefore be read into s.146 TULRCA.	Supreme Court granted permission to appeal in November 2022. The case is due to be heard on 12 and 13 December 2023.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		The Court of Appeal held that failure to give employees legislative protection against any sanction short of dismissal for taking official industrial action might put the UK in breach of Article 11 of the European Convention on Human Rights, even in the case of a private sector employer, if the sanction was one which struck at the core of trade union activity. However, an attempt to address this by reading down section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 would result in impermissible judicial legislation and was therefore a matter that should be left to Parliament. The case is due to be heard by the Supreme Court on 12 and 13 December 2023.	
14.	Manjang v Uber Eats UK Ltd & Ors, Raja v Uber	**Discrimination: Uber workers to challenge facial recognition software as discriminatory.** Two separate claims to employment tribunals will allege that Uber's decision to use a facial recognition system to verify the identity of their drivers indirectly discriminates on the ground of race. Each claimant is being supported by the Independent Workers Union of Great Britain and App Drivers or Couriers Union. The cases are due to be heard by an employment tribunal with hearing dates awaited.	Awaiting hearing date to be listed in the Employment Tribunal.
15.	USDAW v Tesco Stores Ltd	**Employment Contracts: Implying contractual terms.** The Court of Appeal allowed Tesco's appeal from an EAT decision that there existed a mutual intention between the parties in the terms of the contract that the right to retained pay would be permanent for as long as each relevant employee was employed in the same substantive role. The EAT decision had prevented Tesco from terminating and re-engaging a group of warehouse operatives in order to remove the contractual entitlement to the enhanced pay. The Court of Appeal held that the EAT should have interpreted the express terms of the contract in accordance with their natural and ordinary meaning, namely that Tesco would have the right to give notice in the ordinary way, and that the entitlement to retained pay would only last as long as the specific contract. In addition, the Court of Appeal overturned the associated injunction issued as part of the decision. Due to be heard by the Supreme Court on 24 and 25 January 2024.	Due to be heard by the Supreme Court on 24 and 25 January 2024.
16.	Hope v British Medical Association	**Unfair dismissal: was dismissal for bringing numerous grievances which the claimant refused to progress or withdraw fair?** The EAT held that the claimant had been fairly dismissed for bringing numerous vexatious and frivolous grievances and refusing to comply with a reasonable management instruction to attend grievance meetings. The appeal was on the basis that the tribunal had wrongly concluded that the claimant's actions could have been construed as gross misconduct in the contractual sense.	Court of Appeal hearing for 2 February 2023 vacated. A new hearing date is awaited.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		The EAT held that not every case will have such a contractual element and where there is no contractual element the tribunal is not required to determine whether the conduct amounted to a contractual breach. It held that the claimant has been unfairly dismissed as the conduct did amount to gross misconduct as given the size of the employer and its administrative resources, the respondent had acted reasonably.	
17.	Bailey v (1) Stonewall Equality Ltd (2) Garden Court Service Company (3) representatives of Garden Court Chambers	**Religion and belief: did a barristers' chambers discriminate against a barrister due to her 'gender critical' philosophical beliefs and did the organisation Stonewall instruct, cause or induce that discrimination?** An employment tribunal held that Garden Court Chambers had discriminated against a barrister for holding 'gender critical' beliefs and for expressing misgivings about Stonewall's policy aims, but rejected the claimant's claim against Stonewall for instructing, causing or inducing that discrimination. The employment tribunal found that the communications from Stonewall relating to the claimant were just a protest and not sufficient to amount to an inducement, or attempted inducement, of any particular course of action by Garden Court. The claimant has appealed to the EAT as to whether the ET was correct to reject claims that Stonewall had instructed, caused or induced discrimination by Garden Court (or attempted to do so), under section 111 of EqA 2010.	Permission to appeal lodged at the EAT on 22 September 2022. Awaiting sift by a judge.
18.	Element v Tesco Stores Ltd	**Equal Pay: Burden of Proof** The EAT held that the statutory burden of proof under s136 of the Equality Act 2010 (EqA) does not shift when determining preliminary issues in an equal pay claim. The burden of proof only shifts when a prima facie case on all aspects of the claim has been established. Here there was a preliminary hearing to determine the single issue of whether there was a job evaluation study (JES) that rated the claimants' and comparators' jobs as equivalent. The tribunal did not err in making finding of facts and drawing inferences to reach a conclusion on the balance of probabilities. The EAT also confirmed that whether a study is a JES for the purposes of the EqA should be determined by applying the statutory definition. The case is due to float at the Court of Appeal on 17 and 18 October 2023.	Due to float at the Court of Appeal on 17 and 18 October 2023.
19.	EasyJet European Works Council v easyJet Plc	**European Works Council: Jurisdiction for complaints** The EAT upheld a decision of the Central Arbitration Committee (CAC) that, following the end of the Brexit transition period, regulation 4 of the amended Transnational Information and Consultation of Employees Regulations 1999 should be interpreted as giving the CAC jurisdiction to hear complaints about the operation of a European Works Council (EWC) where the employer's central management is situated in the UK, not just in cases where it is physically outside the UK	Due to be heard by the Court of Appeal on 23 June 2023.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		but "deemed" to be in the UK under regulation 5(1). Due to be heard by the Court of Appeal on 23 June 2023.	
20.	Benyatov v Credit Suisse Securities (Europe) Ltd	**Duty of care: consideration of employer's duty to protect employees from criminal conviction and duty to indemnify** The Court of Appeal held that an employer did not owe an employee a duty of care to protect him from criminal conviction in the performance of his duties because the employer did not have actual or constructive knowledge of the risk of criminal conviction to the employee nor was it reasonably foreseeable. The employer was not held to be obliged to provide compensation pursuant to an implied duty to indemnify.	Permission to appeal to the Supreme Court was sought on 16 March 2023.
21.	Hilaire V Luton Borough Council	**Duty to make reasonable adjustments** The EAT held that the duty to make reasonable adjustments did not arise where a disabled employee refused to participate in an interview as part of a redundancy process for a reason unconnected to his disability. The Employment Tribunal did err by failing to consider how his disability might affect his ability to participate in the interview, but the EAT found that the real reason for the non-participation was because he had lost confidence in his employer. Permission to appeal to the Court of Appeal has been sought.	Permission to appeal to the Court of Appeal has been sought.
22.	Lloyd v Elmhurst School Limited	**NMW: calculation of minimum wage according to "basic hours"** The EAT held that a teaching assistant who was employed to work three days a week during term time but was contractually entitled to the usual school holidays as “holidays with pay”, was entitled to receive minimum wage payments calculated according to her “basic hours”, which could include hours that were not working hours. The tribunal had erred in focusing on weeks the claimant had worked, rather than ascertaining her basic hours from her contract alone. Permission to appeal to the Court of Appeal has been sought.	Permission to appeal to the Court of Appeal has been sought.

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