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**LABOUR &
EMPLOYMENT**

United Kingdom



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Labour & Employment

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LEGISLATION AND AGENCIES

Primary and secondary legislation

What are the main statutes and regulations relating to employment?

The main statutes relating to employment are the [Employment Rights Act 1996](#), the [Trade Union and Labour Relations \(Consolidation\) Act 1992](#) and the [Equality Act 2010](#). There are also several other employment laws and regulations in the United Kingdom.

Although employment law in Scotland and Northern Ireland is very similar to that which applies in England and Wales, there are some differences, particularly in Northern Ireland concerning discrimination law.

Law stated - 26 February 2024

Protected employee categories

Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

In the United Kingdom, anti-discrimination legislation in the form of the Equality Act 2010 prohibits discrimination across nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race (which includes skin colour, nationality and ethnic or national origin), religion and beliefs, and sex and sexual orientation.

The term 'discrimination' encompasses several concepts and causes of action, as follows:

- Direct discrimination: someone is treated less favourably than another person because of a protected characteristic that they have (direct discrimination), that they are thought to have (perception discrimination) or because they associate with someone who has a protected characteristic (discrimination by association). Age discrimination is the only type of direct discrimination that can be objectively justified by showing that it is a proportionate way of achieving a legitimate aim.
- Indirect discrimination: applying a provision, criterion or practice that puts those with a protected characteristic at a disadvantage that cannot be objectively justified by showing that it is a proportionate way of achieving a legitimate aim.
- Discrimination arising from disability: unfavourable treatment towards a disabled person because of something arising as a consequence of their disability that cannot be objectively justified by showing that the treatment is a proportionate way of achieving a legitimate aim.
- Reasonable adjustment (applying only in disability discrimination): a duty to make a reasonable adjustment to the working environment to ensure that a disabled person is not placed at a substantial disadvantage.
- Equal pay: paying one gender less than the other where their work is the same or equally valuable work, or has been rated as equivalent in a professional study, and where such disparity in pay is not justified by a material difference.
-

Victimisation: subjecting someone to a disadvantage in retaliation for that person having availed themselves of, or supported, any protections under any discrimination statute.

- Harassment: unwanted conduct related to any protected characteristic having the purpose or effect of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive working environment (with specific provisions for sexual harassment).
- Third-party harassment: liability of the employer for harassment of an employee by a third party (provisions in the Equality Act 2010 that rendered employers liable for third party harassment were repealed in 2013, and employers are now likely to be liable for third party harassment only in very specific circumstances).

Individuals are also protected from harassment by the Protection from Harassment Act 1997, provided that there are at least two incidents of harassment and the harasser must know or ought to know that their actions amount to harassment.

Employees are permitted to ask questions of their employers and it will remain open to a tribunal to consider how an employer has responded to such questions as a contributory factor in deciding a discrimination claim.

Also, seeking, making or receiving a relevant pay disclosure (aimed at discovering whether discrimination in pay is occurring) is protected under the Equality Act 2010. Clauses in employment contracts that are aimed at ensuring pay confidentiality are unenforceable insofar as they prevent disclosure for this purpose.

Law stated - 26 February 2024

Enforcement agencies

What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The enforcement of most employment rights is done through individual claims and actions to and in the UK employment tribunals and civil courts. Some collective matters (eg, trade union recognition under a statutory scheme) are dealt with by the Central Arbitration Committee. His Majesty's Revenue and Customs is responsible for the enforcement of the national minimum wage.

The Equality and Human Rights Commission is a public body that has a statutory duty to promote and monitor human rights, and protect, enforce and promote equality across the nine protected characteristics provided for in the Equality Act 2010. It has a variety of enforcement powers, including the ability to carry out investigations, enter into agreements with alleged discriminators to prevent unlawful acts, apply to courts for injunctions to stop discrimination, and institute or intervene in legal proceedings.

Law stated - 26 February 2024

WORKER REPRESENTATION

Legal basis

Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

The Transnational Information and Consultation of Employees Regulations 1999 (and its amending regulations, set forth in 2010) apply to European works councils, and the Information and Consultation of Employees Regulations 2004 apply to domestic works councils.

Works councils are not mandatory and require an employee request or employer initiative for establishment. The applicable legislation sets out thresholds for the size and geographical spread of the relevant workforce for the provisions to apply.

The United Kingdom's withdrawal from the European Union substantially affects the operation of European works councils in the United Kingdom. UK employees are still able to participate in a European works council in certain circumstances if this is permitted by the agreement that establishes the works council.

Law stated - 26 February 2024

Powers of representatives

What are their powers?

There are several circumstances in which an employer must inform and consult with employee representatives or recognised trade unions, which include but are not limited to:

- business transfers and service provision changes (though pursuant to the Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023, from 1 July 2024, employers with fewer than 50 employees and employers of any size involved in a transfer of fewer than 10 employees will no longer be required to elect employee representatives and may be able to consult directly with employees);
- collective redundancies;
- European works council agreements;
- health and safety issues;
- changes to pensions; and
- domestic works council agreements.

Consultation must be undertaken with the aim of reaching an agreement with employee representatives. There is no requirement to reach an agreement.

Law stated - 26 February 2024

BACKGROUND INFORMATION ON APPLICANTS

Background checks

Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

The criminal records checking regime in England and Wales is administered by the Disclosure and Barring Service (DBS). The regime enables employers to access criminal records information about their employees, subject to certain limitations.

An employer's ability to obtain a criminal records check for a prospective employee is limited by data protection law, including the retained EU law version of the EU General Data Protection Regulation 2016/679 ([UK GDPR](#)) and the Data Protection Act 2018. Information related to the commission of a criminal offence is personal data and cannot be processed by an employer without a lawful basis for doing so. Also, the Rehabilitation of Offenders Act 1974 regulates the disclosure of 'spent' convictions to some employers (a conviction is deemed to be spent when a person who has been convicted of a certain criminal offence does not re-offend during a specified period from the date of conviction). The Rehabilitation of Offenders Act 1974 prevents certain employers from refusing to employ someone (or otherwise prejudicing that person) in a situation in which an employee or candidate has disclosed or has failed to disclose a spent conviction (except in respect of certain occupations and professions, including those who work with children or vulnerable people, medical and legal professionals and particular financial sector occupations).

Depending on the circumstances and the kind of DBS check an employer seeks, the check can be carried out by the individual, the employer or certain eligible third parties. DBS checks are required before an applicant can work with young children or vulnerable adults and may be desirable in other circumstances (eg, for professions and occupations covered by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975).

Law stated - 26 February 2024

Medical examinations

Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

Pre-employment health checks or questions are specifically regulated under the Equality Act 2010. Except in limited prescribed circumstances, pre-employment questions of or about an applicant are prohibited before an offer of work to the applicant is made, or before their inclusion in a pool from which candidates for work will be selected.

Individual offers of employment can be made conditional upon satisfactory health checks, but a recruiting employer may then render itself liable to discrimination claims if it appears that an offer is not confirmed based on the information disclosed by the health checks.

Medical reports given by a medical practitioner responsible for a person's care (rather than by an independent doctor appointed by the employer) are subject to the Access to Medical Reports Act 1988, which essentially allows the person the right of prior sight and comment on the report.

Medical information about a person also constitutes a special category of personal data for the regime of protection of the [Data Protection Act 2018](#), under the UK GDPR.

Law stated - 26 February 2024

Drug and alcohol testing

Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

General principles derived from the Data Protection Act 2018, the UK GDPR and the Human Rights Act 1998 suggest that a requirement for drug or alcohol tests should be justified, necessary and proportionate. Such tests tend, therefore, to be required in the context of particular roles within the transport and manufacturing sectors (justified by health and safety considerations), and sometimes also for particular roles within the financial and other professional sectors.

During employment, even where such tests are appropriately justified, it is recommended that their use also be reflected in an appropriate provision in the relevant employment contract.

It is rarely appropriate for such tests to be administered by the person's doctor as the rights afforded under the Access to Medical Reports Act 1988 would apply to the resulting report. Issues can arise in such cases, particularly where the requirement to submit the results of drug or alcohol tests appears unjustified or unjustifiably targeted at particular groups.

Law stated - 26 February 2024

HIRING OF EMPLOYEES

Preference and discrimination

Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

Positive discrimination is generally unlawful in the United Kingdom; however, there are certain additional positive requirements imposed on public bodies, and reasonable adjustment in disability discrimination is regarded as a form of partial positive discrimination.

Under the Equality Act 2010, employers in the United Kingdom may (although they are not required to) take the under-representation of those with protected characteristics into account when selecting between two equally qualified candidates for recruitment or promotion, provided that there is no automatic selection of members of under-represented groups and decisions are not made irrespective of merit (ie, by the use of mandatory quotas, which is an increasingly common phenomenon in mainland Europe). Regardless of these provisions, the selection of a less-qualified candidate because they are a member of a protected group remains unlawful.

Law stated - 26 February 2024

Written contracts

Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

There is no statutory requirement for a written employment contract. There must, however, be a statutory statement of particulars that must be provided to the employee or worker on day one of their employment, incorporating the information set out below (some of which can be provided in a supplementary statement). This right is provided for in section 1 of the Employment Rights Act 1996 and, for this reason, such statements are commonly referred to as 'section 1 statements'. Section 1 statements cover:

- the names and addresses of the employee or worker and the employer;
- the start date and (for employees) the continuous employment commencement date;
- the job title;
- the place of work;
- whether the work is temporary or fixed-term, and the length of the temporary or fixed-term work if applicable;
- terms relating to work outside the United Kingdom for a period of more than one month;
- remuneration details;
- the hours of work;
- the days of the week on which the employee or worker is required to work and whether working hours or days may be variable;
- any probationary period that starts at the beginning of the employment relationship, including any conditions and its duration;
- holidays and holiday pay;
- sickness and sick pay (may be provided in a separate document);
- any other paid leave (eg, family-related leave such as maternity or paternity leave, or time off for public duties) (may be provided in a separate document);
- the pension (may be provided in a separate document within two months of the beginning of employment);
- any part of any training entitlement that the employer requires the employee or worker to complete, including any training that it requires but does not pay for;
- any other benefits provided by the employer;
- the notice period;
- collective agreements (may be provided in a separate document within two months of the beginning of employment); and
- disciplinary and grievance procedures (may be provided in a separate document within two months of the beginning of employment).

Therefore, it is common practice in the United Kingdom for all employees to have a written employment contract with their employers that contains at least the terms set out above.

As noted above, the right to receive a section 1 statement applies to both employees and workers. In broad terms, the term 'worker' is defined as a third employment status that includes individuals who are neither employees nor self-employed. Typically, workers are individuals who are less independent than the self-employed and who qualify for some (but not all) of the statutory protections afforded to employees. In the context of the right to receive a section 1 statement, section 230 of the Employment Rights Act 1996 defines 'worker' broadly as:

an individual who has entered into or works under (or, where the employment has ceased, worked under)–

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

Certain types of clauses are unlikely to be enforceable unless they are in a written employment contract; for example, post-termination covenants not to compete, and post-termination confidentiality and intellectual property protection clauses.

Law stated - 26 February 2024

Fixed-term contracts

To what extent are fixed-term employment contracts permissible?

Fixed-term employment contracts are permissible; however, certain rights and protections are given by the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002. There is no maximum duration for fixed-term contracts, but successive fixed-term contracts of four or more years will automatically be deemed to be permanent contracts with the employer unless objectively justified by the employer.

Law stated - 26 February 2024

Probationary period

What is the maximum probationary period permitted by law?

There is no maximum period. Customarily, employers will impose a period of six months or less. This probationary period may be extended at the discretion of the employer if stated in the employment contract.

Law stated - 26 February 2024

Classification as contractor or employee

What are the primary factors that distinguish an independent contractor from an employee?

An employee is someone required to perform work under the control of an employer and the employee has no power to substitute their labour. An employment relationship is also characterised by the fundamental mutual obligations to personally perform work (employee), and to provide and pay for it (employer).

There is no single determinative test for employment. Various factors will be considered, including the amount of control exercised over a person by the hirer, whether the person is required to personally provide the services and the extent to which the person is integrated within the hirer's business.

An independent contractor is in business on their own account, takes profits, bears losses and risks, and controls their own work product. They normally (subject to limited exceptions) have the power to substitute labour. Determination of employee or independent contractor status is a question of substance over form.

Law stated - 26 February 2024

Temporary agency staffing

Is there any legislation governing temporary staffing through recruitment agencies?

The Agency Workers Regulations 2010 implement EU law to guarantee that basic employment conditions are no less favourable for temporary agency workers, and that such workers have equal access to facilities and opportunities as permanent staff. The Regulations provide two different classes of rights: those that are provided as soon as the agency worker starts at the company (day one rights) and those that are granted after 12 weeks of continuous work.

Day one rights stipulate that temporary agency workers must be provided with the same access to collective facilities and amenities that the hirer would offer to its own employees. Temporary agency workers are also protected from less favourable treatment (unless this can be objectively justified) and must be provided with information about job vacancies.

Once a temporary agency worker has completed 12 weeks of continuous work for the hirer, they are entitled to the same basic working and employment conditions as a comparable worker employed by the hirer. This means that they are entitled to the same pay, duration of working time, and conditions concerning night work, rest periods and annual leave as a comparable worker employed by the hirer. Since 6 April 2020, temporary agency workers who have entered into a pay between assignments contract (previously exempt from pay parity) have also been entitled to equal treatment concerning pay.

The Agency Workers Regulations 2010 stipulate how liability for breaches of these rights will be apportioned between the hirer and the recruitment agency. In certain circumstances, if the recruitment agency can demonstrate that it has satisfied conditions in respect of taking reasonable steps to ensure that the hirer complies with the Regulations, liability for certain breaches will pass to the hirer.

The Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003, as amended, also regulate staffing through recruitment agencies. In particular, this legislation:

- prohibits a recruitment agency or employment business from charging temporary agency workers a fee for finding them work;
- prescribes the terms that must be agreed upon by temporary agency workers; and
- limits the transfer fees that may be charged to a hirer if a temporary agency worker becomes directly engaged by their hirer.

Until 21 July 2022, regulation 7 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 also prohibited recruitment agencies and employment businesses from providing temporary agency workers to hirers to replace workers taking part in official industrial action, or to replace other workers temporarily covering for striking workers. However, as of 21 July 2022, this prohibition was revoked through amending regulations introduced in the context of ongoing and anticipated industrial action in rail and other sectors. This meant that it was in theory possible for recruitment agencies and employment businesses to engage temporary agency workers to cover official strikes.

However, a number of trade unions brought judicial review proceedings to challenge the lawfulness of these amending regulations on the basis of consultation failures and human rights grounds. The High Court granted permission for the review to proceed and gave its judgment on 13 July 2023, ordering the quashing of the amending regulations with effect from 10 August 2023. This order was made on the basis that Kwasi Kwarteng MP, Secretary of State for Business and Trade when the amending regulations were introduced, had unlawfully failed to comply with his statutory duty to consult (the court did not express a view on the human rights grounds cited by the unions). As such, the prohibition in regulation 7 is again in force. If the government wishes to legislate again to revoke regulation 7, it will first need to discharge its statutory duty to consult. The government launched a new consultation on the repeal of regulation 7 in November 2023. The consultation closed on 16 January 2024, and it remains to be seen what the government's next steps will be.

Law stated - 26 February 2024

FOREIGN WORKERS

Visas

Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

There is no limit on the number of visas that may be issued annually.

Unless a foreign national qualifies as being exceptionally talented, an entrepreneur or a person with high potential, foreign employees must be sponsored by an employer before they can obtain entry clearance and authority to work in the United Kingdom. An employer must have obtained a sponsorship licence from the Home Office before it can sponsor foreign employees to work for it in the United Kingdom. The two principal visas available for both European Economic Area and non-European Economic Area nationals coming to the United

Kingdom, which are issued through a points-based system, are the skilled worker visa and the senior or specialist worker (global business mobility) (GBM) visa.

Skilled worker visas

Skilled worker visas are for foreign nationals coming to the United Kingdom to do an eligible job with an approved sponsor. Some foreign nationals who are already in the United Kingdom may also be eligible to switch onto skilled worker visas from within the United Kingdom. The foreign national must satisfy the eligibility and points criteria, and be able to evidence this as part of the visa application process.

Skilled worker visas can be extended indefinitely for periods of five years at a time. After five years of continuous residence in the United Kingdom, the foreign employee may be eligible to apply for indefinite leave to remain in the United Kingdom (ie, settlement). If a foreign employee does not extend their visa or apply for another applicable immigration permission, sufficient evidence (specified by the Home Office) must be maintained to evidence the date that the foreign employee permanently left the United Kingdom or the expiry of their visa, whichever is sooner.

GBM visas

GBM visas are available for foreign employees of multinational companies who are transferring from one overseas corporate entity to undertake an assignment in a skilled job with a related entity in the United Kingdom. These employees must also satisfy the points criteria and will be required to demonstrate this as part of the entry clearance process.

GBM visas can be extended up to a maximum of five years, or nine years if the employee receives a gross annual salary equivalent to £73,900 or more. It is not possible to hold a GBM visa for more than five years in any six-year period, or nine years in any 10-year period if their gross annual salary is £73,900 or more. It is not possible to use time spent in the United Kingdom under the GBM route towards a future indefinite leave to remain application.

Law stated - 26 February 2024

Spouses

Are spouses of authorised workers entitled to work?

A dependent spouse or partner of a skilled worker or GBM visa holder is permitted to work in the United Kingdom (except as a professional sportsperson, including as a sports coach), provided that they make an entry clearance application and that the skilled worker or GBM visa holder can support their spouse without recourse to public funds.

Law stated - 26 February 2024

General rules

What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker who does not have a right to work in the jurisdiction?

There are laws in place that prevent illegal working in the United Kingdom. An employer can face penalties if it employs a person aged 16 or over who does not have permission to be or work in the United Kingdom. An employer found guilty of an offence could face a civil penalty of up to £60,000 for each employee who has been employed illegally. There are defences against these penalties if the employer accurately completes a right to work check (either manually, where the employee's original documents such as a passport are checked, verified and copied by the employer, or by using the online Right to Work Checking Service) before the employee commences work. In the case of employees who have only a limited right to remain in the United Kingdom, these checks must be repeated on the expiry of their right to remain.

Where, however, an employer is found to have knowingly hired workers illegally, the maximum penalty is a five-year prison sentence or an unlimited fine, or both.

Skilled worker and GBM visas are employer-sponsored immigration categories. Permissions under the skilled worker and GBM routes only allow the person to work for the employer entity that sponsors them and up to an additional 20 hours per week in a similar role for another employer (provided that the additional work is not in place of the originally sponsored employment). A precondition for skilled worker and GBM visas is that the UK entity has a sponsorship licence (granted by the Home Office).

A global talent visa, if granted, is personal to the holder, meaning that they can then work for any employer or work on a self-employed basis for the duration of the visa (which is normally issued for a five-year period).

An innovator founder can work for the company in which they have invested, as well as skilled work outside of their business.

Law stated - 26 February 2024

Resident labour market test

Is a labour market test required as a precursor to a short or long-term visa?

On 1 December 2020, the Home Office removed the requirement for employers to conduct a resident labour market test. This has instead been replaced with a genuineness requirement, which means that employers must only sponsor a foreign national through the skilled worker route where they have a genuine vacancy for the role in the United Kingdom. Employers must retain sufficient evidence – such as copies of any adverts posted or the recruitment process undertaken for the role – to evidence the genuine vacancy.

If the employer advertised the role, they must retain all of the following:

- Details of any advertisements placed. There is no specified minimum number of adverts the employer must place or prescribed methods of advertising. Where the employer has placed more than one advert, it should retain evidence of all adverts placed. Examples of evidence include:
 - a screenshot, printout or photocopy of the advert;

- a record of the text of the advert; and
 - information about where the job was advertised (eg, website address) and for how long.
- A record of the number applicants for the job and the number of applicants shortlisted for interviews or for other stages of the recruitment process.
 - At least one other item of evidence or information that shows the process used to identify the most suitable candidate. Employers do not have to retain application forms, CVs, interview notes or any other personal data relating to unsuccessful candidates. Examples of evidence include:
 - copies or summaries of the interview notes for the successful candidate;
 - lists of common interview questions used for all candidates as part of the selection process;
 - brief notes on why the successful candidate was selected and why other candidates were rejected;
 - information about any scoring or grading process used to identify the successful candidate; and
 - any other relevant information or evidence.

If the employer did not advertise the role, it must, if asked, be able to explain (and, where practicable, provide evidence of) how it identified that the candidate was suitable. Examples include, but are not limited to, if the employer:

- identified the candidate through a university careers fair;
- the candidate was already legally working for the employer through another immigration route and the employer established that the candidate was suitable for the role through their previous performance; and
- the candidate applied to the employer outside of a formal advertising campaign (ie, made a speculative application) and the employer was satisfied (eg, by interviewing the candidate, or checking references or qualifications) that they had the necessary skills and experience to do the job.

Law stated - 26 February 2024

TERMS OF EMPLOYMENT

Working hours

Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

The Working Time Regulations 1998 (the WTR 1998) limit working hours as follows:

- a 48-hour maximum working week calculated as an average over a 17-week period (the maximum working week is reduced for employees under the age of 18); and
-

an individual opt-out clause by written agreement (employees under the age of 18 cannot opt out).

These Regulations also govern shift work, night work and paid annual leave.

In 2023, the Department of Business and Trade published a policy paper announcing certain amendments to employment policy, including certain aspects of the WTR 1998 that it stated would benefit from reform to ensure they were fit for purpose. After consulting on a variety of proposals, and in light of the effects of the Retained EU Law (Revocation and Reform) Act 2023, the government introduced the Employment Rights (Amendment, Revocation, and Transitional Provision) Regulations 2023, which have, among other things:

- clarified the record-keeping requirements under the WTR 1998;
- codified the effect of retained EU case law on the carry-over of holiday in certain circumstances;
- codified the effect of retained EU and domestic case law on the meaning of 'normal remuneration' in relation to holiday pay; and
- clarified certain elements of holiday accrual and pay for irregular hours and part-year workers, including allowing for rolled-up holiday pay.

Most of these amendments came into force on 1 January 2024.

The Department of Business and Trade has also published new guidance on holiday entitlement and holiday pay, including calculating holiday entitlement and holiday pay for irregular and part-year workers in particular.

Law stated - 26 February 2024

Overtime pay – entitlement and calculation

What categories of workers are entitled to overtime pay and how is it calculated?

Overtime pay is not governed by specific legislation but is generally a matter of individual or collective agreement. The National Minimum Wage Act 1998 and the National Minimum Wage Regulations 2015, as amended, govern an employer's obligation to pay a certain minimum amount per hour, which may render unpaid overtime unlawful in certain circumstances.

Law stated - 26 February 2024

Overtime pay – contractual waiver

Can employees contractually waive the right to overtime pay?

There is no statutory right to overtime pay; it is a matter for a contract, so an employment contract will commonly confirm that no overtime pay is payable. It is possible to include a

clause within an employment contract to confirm that the employee is not entitled to receive overtime payments in respect of any additional hours that are worked.

Law stated - 26 February 2024

Vacation and holidays

Is there any legislation establishing the right to annual vacation and holidays?

The Working Time Regulations 1998 establish a statutory entitlement to 5.6 weeks (or 28 days) of leave per annum (inclusive of bank and public holidays), which is paid. Accrual is monthly and is paid in lieu only on termination. Special provisions apply to part-time employees, and (for leave years starting on or after 1 April 2024, pursuant to the new Employment Rights (Amendment, Revocation, and Transitional Provision) Regulations 2023) irregular hours or part-year workers.

Law stated - 26 February 2024

Sick leave and sick pay

Is there any legislation establishing the right to sick leave or sick pay?

The Social Security Contributions and Benefits Act 1992, as amended, and the Statutory Sick Pay (General) Regulations 1982, as amended, govern the UK statutory sick pay scheme.

The Social Security Contributions and Benefits Act 1992, as amended, entitles qualifying employees who are absent for four or more consecutive days (including weekends) to receive a statutory minimum weekly payment. Employees cannot receive any payment for the first three days of absence.

Statutory sick pay is paid for up to 28 weeks in any period of incapacity or in any series of linked periods of incapacity (ie, any periods that are not more than eight weeks apart). Statutory sick pay stops at three years even if an employee has not yet been paid for 28 weeks of absence.

Law stated - 26 February 2024

Leave of absence

In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

The principal statutory leaves of absence are set out in the table below. Note that 'paid at the statutory rate' does not mean full contractual pay; it is an amount set by the government but paid by the employer. Employers should be able to recover a large percentage of this amount from the government. Also, some employers may choose to pay enhanced maternity, paternity, adoption or shared parental pay and benefits, among others. Leave may also be provided for by contract or as otherwise agreed.

Type	Length	Compensation
Maternity leave	Up to 52 weeks	Up to 39 weeks paid at the statutory rate
Adoption leave	Up to 52 weeks	Up to 39 weeks paid at the statutory rate
Paternity leave	Two weeks	Paid at the statutory rate
Shared parental leave*	Up to 50 weeks	Up to 37 weeks paid at the statutory rate†
Parental leave‡	18 weeks for each child	Unpaid
Parental bereavement leave	Two weeks	Paid at the statutory rate
Dependant leave	Reasonable time off needed to deal with emergencies	Unpaid
Jury service	Length of jury service	Unpaid

* Can only be taken when a new mother or new adoptive parent has given the requisite notice to end their maternity or adoption leave, and the remainder of their leave will be available as shared parental leave. Shared parental leave will enable new parents to take leave together or to split the leave period between them. It is also possible for new parents to determine how the shared parental pay will be divided between them.

† Accounts for the two-week period of compulsory maternity leave and equivalent two-week period of adoption leave.

‡ Available to each parent.

Law stated - 26 February 2024

Mandatory employee benefits

What employee benefits are prescribed by law?

Legislation came into force in October 2012 through the [Pensions Act 2008](#) that requires employers to automatically enrol eligible job holders into a qualifying workplace pension scheme. The obligations on employers were brought into force in stages over a five-and-a-half-year period, depending on the size of the employer.

Eligible job holders must be between the ages of 22 and the state pension age, and must earn a statutory minimum amount. Employers will need to determine whether existing pension schemes comply with the requirements to be qualifying pension schemes. Alternatively, the government has set up the National Employment Savings Trust, which is available for employers to use to comply with the duty of auto-enrolment.

Overall employee and employer contributions to the qualifying pension scheme must total 8 per cent, with a minimum of 3 per cent being paid by the employer and the remainder being made up of employee contributions and tax relief. Contributions by the employer and the employee are limited to qualifying earnings (ie, earnings between two specific lower and

upper thresholds). The earnings thresholds are reviewed each tax year. For the 2023 to 2024 tax year, the thresholds were £6,240 and £50,270, respectively. These thresholds will remain unchanged for the 2024 to 2025 tax year.

Law stated - 26 February 2024

Part-time and fixed-term employees

Are there any special rules relating to part-time or fixed-term employees?

The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 grant employees (unless objectively justified) the right:

- to the same terms and conditions as comparable permanent employees; and
- not to suffer a detriment or unfair dismissal because of their fixed-term status.

Successive fixed-term contracts for four or more years will automatically be deemed to be permanent contracts with the employer, unless objectively justified by the employer.

The rules relating to part-time workers are governed by the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, which grant such workers (unless objectively justified) the right:

- to the same terms and conditions as comparable full-time workers; and
- not to suffer a detriment or unfair dismissal because of their part-time status.

Law stated - 26 February 2024

Public disclosures

Must employers publish information on pay or other details about employees or the general workforce?

The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 impose an obligation on private- or voluntary-sector employers with 250 or more employees on the snapshot date (which is 5 April in the relevant year) to publish certain data in respect of the employers' gender pay gaps on an annual basis. The definition of 'relevant employees' for the purposes of the Regulations does not include partners but does include casual workers and certain contractors.

Employers are required to publish the following information on their own websites and upload it to the government's gender pay gap services website:

- the gender pay gap (mean and median averages between men's and women's hourly pay);
- the gender bonus gap (mean and median averages between bonus pay awarded to men and women);
- the proportion of men and women receiving bonuses; and
- the proportion of men and women in each quartile of the employer's pay structure.

The data will remain accessible to the public for three years, which will allow comparisons to be drawn year on year and across industry sectors.

Employers are required to provide a written statement confirming that their gender pay gap information is accurate. The confirmation statement must be signed by a senior person, such as a director. Although it is not mandated by the Regulations to include an accompanying narrative, many employers choose to do so, and the Advisory, Conciliation and Arbitration Service guidance on the reporting requirements encourages the provision of a narrative to contextualise the data.

The Regulations do not contain any enforcement mechanisms or sanctions for failure to comply with the reporting obligations or for publishing inaccurate data. However, the government has indicated that it will run periodic checks to assess non-compliance, and the Equality and Human Rights Commission has stated that it will use its existing powers to take enforcement action in respect of a failure to comply with the Regulations.

Having consulted on proposals to introduce mandatory ethnicity pay reporting alongside gender pay gap reporting, in 2022, the government confirmed that ethnicity pay reporting will remain voluntary for the time being. The government has committed to supporting employers who wish to publish their ethnicity pay gap data with new guidance and has consulted on draft standards for such data. In 2023, the Labour Party announced that, if elected in the next general election, it will introduce both mandatory disability and race pay gap reporting.

Law stated - 26 February 2024

POST-EMPLOYMENT RESTRICTIVE COVENANTS

Validity and enforceability

To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

Post-termination covenants are assumed to be unenforceable as restraints of trade under UK public policy unless:

- they go no further than is reasonably necessary in scope, duration and geographical extent to protect an employer's legitimate business interests from the actions of the employee in question; and
- they do not otherwise offend public policy.

At present, there is no maximum duration for post-termination covenants; however, restrictions lasting more than 12 months are generally less likely to be enforceable in the United Kingdom except in particular circumstances justifying a greater period of restriction. Also, in May 2023, in response to a 2020 consultation on measures to reform post-termination non-compete clauses, the UK government announced its intention to legislate to limit the duration of post-termination non-complete clauses in employment contracts to a maximum of three months. Legislation actioning this cap is still outstanding and is proposed to be introduced 'when parliamentary time allows'.

Law stated - 26 February 2024

Post-employment payments

Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

There is no requirement for an employer to continue to pay a former employee while they are subject to post-employment restrictive covenants.

Law stated - 26 February 2024

LIABILITY FOR ACTS OF EMPLOYEES

Extent of liability

In which circumstances may an employer be held liable for the acts or conduct of its employees?

At common law, employers are vicariously liable to third parties for acts and omissions of employees in the course of their employment. Employers are vicariously liable for the discriminatory acts and omissions (including harassment) by their employees in the course of employment (where 'course of' has a broader meaning than at common law) and where an employer has failed to take reasonably practicable preventive steps.

Law stated - 26 February 2024

TAXATION OF EMPLOYEES

Applicable taxes

What employment-related taxes are prescribed by law?

The deduction at source of income tax and employer and employee National Insurance contributions (ie, social security) under the UK pay-as-you-earn system is mandated by the Income Tax (Earnings and Pensions) Act 2003.

Law stated - 26 February 2024

EMPLOYEE-CREATED IP AND CONFIDENTIAL BUSINESS INFORMATION

Ownership rights

Is there any legislation addressing the parties' rights with respect to employee inventions?

Employee inventions are addressed by the Patents Act 1977 and the Copyright, Designs and Patents Act 1988. Generally, any intellectual property that is created by an employee in the course of their employment in the United Kingdom will belong to the employer. However, it

is common for there to be an express provision in the employment contract to ensure that this is the case.

Law stated - 26 February 2024

Trade secrets and confidential information

Is there any legislation protecting trade secrets and other confidential business information?

Confidential information and trade secrets are governed by the Trade Secrets (Enforcement, etc) Regulations 2018, which came into force on 9 June 2018 and implement the EU Trade Secrets Directive 2016/943. The Regulations are intended to operate alongside the common law of confidence.

Law stated - 26 February 2024

DATA PROTECTION

Rules and employer obligations

Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

The Data Protection Act 2018 and the retained EU law version of the EU General Data Protection Regulation (UK GDPR) are the primary legal instruments that protect employees' data. The Data Protection Act 2018 provides a comprehensive and modern framework for data protection in the United Kingdom with strong sanctions for malpractice.

There are six data processing principles provided by the UK GDPR, which are that personal data is:

- to be processed fairly, lawfully and transparently;
- to be processed for specified, explicit and legitimate purposes, and not processed in a manner that is incompatible with those purposes;
- to be adequate, relevant and not excessive;
- to be accurate and up to date;
- not to be kept longer than necessary; and
- to be processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and accidental loss, destruction or damage, using appropriate technical or organisational measures.

Law stated - 26 February 2024

Privacy notices

Do employers need to provide privacy notices or similar information notices to employees and candidates?

The UK GDPR creates an obligation on employers as data controllers to notify employees of their personal data handling practices through a privacy notice at the time the data is collected from the employee. If data is collected from another source, privacy information must be provided to the employee within one month.

At the recruitment stage, candidates will also need to be provided with a privacy notice. This can be a short-form privacy notice concerning the processing of their personal data for the purposes of the recruitment exercise only.

A privacy notice informs candidates and employees about how the employer collects, uses, stores, transfers and secures personal data. Employers are advised to undertake an information audit to find out what personal data they hold and what they do with it. The UK GDPR stipulates what information must be included in a privacy notice and requires the information to be presented in a concise, transparent, intelligible and easily accessible form. As a matter of good practice, employers should publish their privacy policy on their business websites.

Law stated - 26 February 2024

Employee data privacy rights

What data privacy rights can employees exercise against employers?

Under the UK GDPR, employees (and indeed all data subjects) have the rights listed below, which are otherwise known as 'delete it, freeze it, correct it' rights. These rights are generally exercised or triggered if there is non-compliance with data protection principles. These rights are the right:

- to erasure or be forgotten;
- to rectification;
- to restriction of processing;
- to object to processing;
- to information;
- to access their own personal data;
- to receive a copy of their personal data;
- not to be subject to automated decision-making; and
- to be notified of a data security breach.

Employers must take particular note of an employee's right to make a data subject access request to their employers for disclosure of personal data and certain information regarding the personal data that is held about them. Employers are under an obligation to comply without undue delay and within one month, with an extension of two additional months if necessary. Given the complexity of most data subject access requests in an employment context, the likely normal period for compliance will be up to three months. However, where a request is manifestly unfounded or excessive, employers may either charge a reasonable fee (taking into account administrative costs) or may refuse to act on the request altogether. In

2023, the Information Commissioner's Office published new employment practice guidance to assist employers with properly handling data subject access requests.

Law stated - 26 February 2024

BUSINESS TRANSFERS

Employee protections

Is there any legislation to protect employees in the event of a business transfer?

Where there is no change in the identity of the employer (eg, a share disposal) the employees' contracts of employment continue. All rights, duties and liabilities owed by or to the employees continue, and the buyer of the employer's shares inherits all those rights, duties and liabilities as the new owner of the employer.

By contrast, the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (together, TUPE), give special protection for the rights of employees on the transfer of an undertaking where there is a relevant transfer. This includes a sale of assets or business activity, or a change of service provider (outsourcing). The TUPE creates:

- particular unfair dismissal rights in the context of a TUPE transfer;
- the automatic transfer principle whereby (subject to a few exceptions) the buyer inherits all rights, liabilities and obligations concerning the assigned employees; and
- the obligation to inform and consult with the representatives of the affected employees, and liabilities for failure to do so by way of a penal award of up to 13 weeks of actual pay for each affected employee. From 1 July 2024, however, the Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023 will amend current practice to remove the requirement to elect employee representatives for employers with fewer than 50 employees, or employers of any size when a business transfer includes fewer than 10 employees. In these cases, employers will now be able to consult directly with employees.

Law stated - 26 February 2024

TERMINATION OF EMPLOYMENT

Grounds for termination

May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

Contractually, at common law, an employer can dismiss an employee for any reason, provided that appropriate notice is given.

Statutorily, if the employee has the relevant qualifying length of service (if applicable), they may be dismissed only for potentially fair reasons pursuant to section 98 of the Employment Rights Act 1996, which are:

- capability;
- conduct;
- redundancy;
- breach of a statutory enactment on the part of the employee or the employer; or
- another substantial reason.

Law stated - 26 February 2024

Notice requirements

Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

Notice of at least the statutorily prescribed minimum must be given before dismissal, as set out in the table below.

Length of service	Notice period
Up to 1 month	None
1 month to 2 years	1 week
2 to 12 years	1 week for each year of completed employment
More than 12 years	12 weeks

UK employers provide additional notice as a matter of custom in the employment contract. Where this is the case, the contractual notice must be given by the employer. Payment in lieu of notice can be given if set out in the employment contract.

Law stated - 26 February 2024

Dismissal without notice

In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

Dismissal without notice or pay in lieu of notice may occur only in cases of gross misconduct (ie, misconduct of a very serious nature including that which the employer is justified in treating as very serious in the context of its business). A non-exhaustive list of examples of gross misconduct must be set out by the employer and relayed to each employee. The list is usually contained in the employment contract.

Law stated - 26 February 2024

Severance pay

Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

Under the Employment Rights Act 1996, statutory redundancy pay exists for employees with two or more years of service. The exact amount is linked to the length of service, the age of the employee and the statutory cap on weekly pay.

Redundancy pay may be enhanced by the employer, including by custom and practice.

Law stated - 26 February 2024

Procedure

Are there any procedural requirements for dismissing an employee?

Individual dismissals

An employer must act reasonably under the Employment Rights Act 1996 for a potentially fair reason if it is dismissing an employee with at least two years of continuous service.

Employers carrying out dismissals (except for dismissals on the grounds of redundancy or the non-renewal of a fixed-term contract) should also follow the principles set out by the Advisory, Conciliation and Arbitration Service (ACAS), which is a public body, in its [Code of Practice](#) (where applicable). A failure to follow the ACAS Code of Practice does not in itself make an employer liable to a claim; however, employment tribunals will take the ACAS Code of Practice into account when considering relevant cases and can adjust any awards they make by up to 25 per cent for unreasonable failure by an employer to follow the ACAS Code of Practice.

Collective dismissals

Prior approval by the UK government is not required by law; however, if the employer proposes to make redundancies affecting 20 or more employees within a particular time frame, it must notify the Department for Business, Energy and Industrial Strategy. Collective consultation with representatives of the affected employees is also required.

Law stated - 26 February 2024

Employee protections

In what circumstances are employees protected from dismissal?

Ordinarily, employees with two years of service have general statutory protection from unfair dismissal.

In addition to protection from ordinary unfair dismissal, employees are protected from 'automatic' unfair dismissal when the reason for dismissal is one of relevant statutory

reasons. Automatic unfair dismissal protection that requires two years of service applies to dismissals:

- owing to a spent conviction;
- in the context of a transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (together, TUPE); and
- relating to the exercise of certain rights by temporary agency workers.

Dismissals in most other contexts that have automatic unfair dismissal protection do not require any qualifying length of service. These include:

- jury service;
- leave for family reasons and related leave for time off for dependants;
- health and safety activities;
- Sunday working;
- asserting certain statutory rights;
- asserting rights under the Working Time Regulations 1998;
- employee trustees of occupational pension schemes;
- employee consultation representatives or candidates (including European and domestic works councils);
- whistle-blowers;
- flexible working requests;
- certain discrimination-related dismissals;
- exercising the right to be accompanied at disciplinary or grievance hearings;
- the rights of part-time employees;
- the rights of fixed-term employees;
- in connection with entitlement to a national minimum wage and to working tax credits;
- in connection with the right to request study and training; and
- trade union membership or activities, or official industrial action.

A dismissal is automatically unfair if it is because of protected activity; that is, it is causally connected to a protected activity.

Dismissals can also attract protection under anti-discrimination legislation.

Law stated - 26 February 2024

Mass terminations and collective dismissals

Are there special rules for mass terminations or collective dismissals?

A special information and consultation regime applies where there are 20 or more affected employees who are proposed to be dismissed for a non-fault reason within a particular time frame. Protective awards exist of up to 90 days of pay per affected employee for the employer's failure to consult. This is governed by section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992.

Also, if the employer proposes to make redundancies affecting 20 or more employees within a particular time frame, it must notify the Department for Business, Energy and Industrial Strategy. Collective consultation with the representatives of the affected employees is also required.

Law stated - 26 February 2024

Class and collective actions

Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

There is no direct equivalent to the US class action in the United Kingdom. However, there are procedural means of dealing with group actions of multiparty claims that allow groups of claimants to link the claims to proceed against a single defendant, as follows:

- Where more than one person has the same interest in a claim, the claim may be begun or the court may order that one or more claimants, or one or more defendants, bring or defend the claim representing others who have the same interest in the claim. Any judgment will be binding on all individuals represented unless the court directs otherwise.
- Where claims by several individuals give rise to common or related issues of fact or law, the court may make a group litigation order to manage the claims. Judgments, orders and directions of the court will be binding on all claims within the group litigation order.

In the context of collective consultation and TUPE, an employee representative brings the claim for a failure to inform and consult, and failure to consult on a collective basis on behalf of the affected employees. If successful, compensation is awarded to each affected employee.

Law stated - 26 February 2024

Mandatory retirement age

Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

Any age-related compulsory retirement must be justified under anti-age discrimination legislation (ie, the Equality Act 2010) and must be fair under unfair dismissal legislation (ie, the Employment Rights Act 1996). Compulsory retirement on medical grounds also has the potential to raise discrimination (principally, disability and age discrimination) and unfair dismissal issues.

Law stated - 26 February 2024

DISPUTE RESOLUTION

Arbitration

May the parties agree to private arbitration of employment disputes?

In contractual disputes, parties may agree to private arbitration of employment disputes, provided that such disputes do not involve statutory employment protection rights.

Where statutory employment protection rights are affected, an employee cannot validly agree, in advance, to give up their right to litigate those rights (eg, an employee cannot agree in their employment contract, entered into before the dispute arose, not to sue their employer for unfair dismissal).

Once a dispute has arisen, private mediation agreed to between the parties is relatively common. Any settlement of a dispute about statutory employment protection rights (including one agreed to during mediation) must satisfy the statutory contracting out requirements if the relevant statutory right is to be validly compromised.

Law stated - 26 February 2024

Employee waiver of rights

May an employee agree to waive statutory and contractual rights to potential employment claims?

An employee can agree to waive their contractual rights. An employee may only waive statutory rights with a valid statutory settlement agreement or through an officer of the Advisory, Conciliation and Arbitration Service (ACAS) on Form COT3, which is an official form used by ACAS to evidence a binding legal settlement between employers and employees.

The requirements for a valid waiver are as follows, with regard to a statutory settlement agreement:

- it must be in writing;
- it must relate to specific proceedings;
- independent legal advice must have been given to the employee;
- the independent adviser must have insurance for negligence;
- the agreement must identify the adviser; and
- the agreement must state that the conditions regulating settlement agreements are satisfied.

Law stated - 26 February 2024

Limitation period

What are the limitation periods for bringing employment claims?

The limitation periods are set out in the table below.

Employment claim	Limitation period
Ordinary unfair dismissal and automatic unfair dismissal	Within three months of the date of termination
Discrimination	Within three months of the date of the act complained of
Equal pay	Six months as of the date of termination of the relevant contract (tribunals can make awards to cover pay disparity going back six years)
Redundancy pay	Six months as of the date of redundancy
Unlawful deduction of wages	Within three months as of the date of deduction

Specific provisions deal with discrimination by omission and for continuing acts that extend over some time.

The standard limitation period for a breach of contract claim is six years, although some such claims can be litigated in an employment tribunal but are subject to a much shorter limitation period.

The primary limitation period applicable to the various statutory employment protection rights may be extended in appropriate circumstances by an employment tribunal. The tribunal's jurisdiction to extend the time limit applicable to discrimination rights provides it with a wider jurisdiction to do so than in the context of other statutory employment protection rights.

Law stated - 26 February 2024

UPDATE AND TRENDS

Key developments and emerging trends

Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction? Are there current proposals to change the legislation?

Impact of the Retained EU Law (Revocation and Reform) Act 2023

From 1 January 2024, the Retained EU Law (Revocation and Reform) Act 2023 (the REUL Act), which received Royal Assent on 29 June 2023, has made sweeping changes to the status, operation and content of retained EU law (known as 'assimilated law' after the end of 2023). In short, the REUL Act removes the principle of supremacy of EU law, directly effective EU rights, and general principles of EU law, so that legislation on the UK statute book will now be interpreted and applied without reference to these features with effect from 1

January 2024. It has also completely revoked certain EU legislation (though less than initially anticipated), and gives the government the power to revoke, restate, vary by regulation or replace any other retained EU law. Further, the REUL Act facilitates certain domestic courts departing from retained EU case law at their discretion.

These changes clearly have the potential to result over time in changes to EU-derived law and a divergence between the approaches taken to such law by UK and European courts. For example, such changes may result from provisions that allow the government to amend EU-derived legislation; and provisions that will enable English courts to deviate from European case law in their interpretation of EU-derived legislation.

To date, the government has taken steps to reproduce some EU-derived employment law into domestic law, including certain key equality and discrimination law and principles via the Equality Act 2010 (Amendment) Regulations 2023. It has also taken steps to reform certain other EU-derived laws, such as the Working Time Regulations 1998 and the Transfer of Undertakings (Protection of Employment) Regulations 2006. It remains to be seen the other ways in which the government will use its expansive new legislative powers to implement changes to EU-derived employment law and to what extent court judgments will depart from European precedent in this area.

Industrial action

2022 and 2023 saw a pronounced uptick in industrial action across a range of sectors, with strike action by rail, postal, healthcare and other workers garnering significant public attention.

In response to these developments, the government introduced the Strikes (Minimum Service Levels) Bill 2023 with a view to curtailing the impact of strike action on levels of service provision in specified sectors (replacing an earlier bill framed only in relation to strike action in the transport sector). After generating significant controversy and attracting a number of proposals for amendments in the House of Lords, the bill ultimately received Royal Assent as the Strikes (Minimum Service Levels) Act 2023 and commenced with immediate effect on 20 July 2023.

The Act amends the Trade Union and Labour Relations (Consolidation) Act 1992 (the 1992 Act) to:

- give the government powers to prescribe, by means of secondary legislation, 'minimum service levels' to be maintained during strike action (but not other forms of industrial action) in the following sectors: fire and rescue, health, transport, border security, education, and nuclear decommissioning radioactive waste management;
- permit employers, once such minimum service regulations have been made by the government in relation to a service, to issue a 'work notice' to a trade union in relation to any strike of which the union has given notice to the employer under the 1992 Act and which relates to the provision of the relevant service. Such work notices will identify the persons required to work and the work they will be required to perform during the strike in order to ensure that the prescribed minimum service level is met; and
- remove certain legal protections for unions and individuals in the event that such notices are breached. In particular, a union will lose existing protection from liability

in tort for inducing participation in a strike if it fails to take reasonable steps to ensure that all union members identified in a work notice comply with it; and an employee will lose existing automatic unfair dismissal protection under section 238A of the 1992 Act if they are an 'identified worker' in relation to a strike pursuant to a work notice and their participation in the strike is in breach of the work notice.

The government has consulted on introducing minimum service levels in relation to border services, rail passenger services, ambulance, fire and rescue, and emergency hospital services. In December 2023, the government introduced regulations to set minimum service levels for border security, rail passenger services and ambulance services. In February 2024, the government introduced the Draft Strikes (Minimum Service Levels: Fire and Rescue Services) (England) Regulations 2024, which specify the purposes of enabling work notices for fire and rescue services. The government has also announced plans to introduce minimum service levels in relation to education and schools, and began consultations on this topic in November 2023.

In January 2024, the Public and Commercial Services union announced its intention to seek judicial review against the government in relation to the Strikes (Minimum Service Levels) Act 2023 on the basis that the Act contravenes the right to strike under article 11 of the European Convention on Human Rights. Additionally, the Labour Party has indicated that it would repeal the changes introduced by the Strikes (Minimum Service Levels) Act 2023 if it forms a government after the next general election.

Covid-19

The effects of the covid-19 pandemic on employment law substantially lessened over the course of 2023. It is expected that 2024 will see further embedding of the new normal, with a return to traditional working practices alongside increasingly well-established arrangements for hybrid and flexible working.

Flexible working

On 5 December 2022, the government published a response to its consultation on flexible working, Making Flexible Working the Default. It also announced its support for a private member's bill, the Employment Relations (Flexible Working) Bill 2022–2023.

The Employment Relations (Flexible Working) Act 2023 received Royal Assent on 20 July 2023. From 6 April 2024, the Act provides for amendments to the Employment Rights Act 1996 such that:

- employees will no longer be required to explain what effect their flexible working request will have on the employer and how any such effect could be dealt with;
- employees will have the ability to make two flexible working requests in any 12-month period;
- employers will no longer be able to refuse requests without consulting with the requesting employee; and
-

employers will be required to make a decision on a given request within two months (unless a longer period is agreed).

The Act does not make the right to request flexible working a 'day one' right, but the Flexible Working (Amendment) Regulations 2023, which also come into force on 6 April 2024, will bring these provisions into force.

Other key aspects of the existing regime will remain in place, such as the current list of business reasons for rejecting flexible working requests.

In January 2024, ACAS presented a draft code of practice on requests for flexible working for parliamentary approval.

Sexual harassment

Following the government's announcement that it intended to introduce a duty for employers to prevent sexual harassment in the workplace, in 2022 it announced its support for a private member's bill introducing such a duty. This bill became the Worker Protection (Amendment of Equality Act 2010) Act 2023, which received Royal Assent on 26 October 2023 and will come into force on 26 October 2024. The Act will amend the Equality Act 2010 to create a new positive duty for employers to take 'reasonable steps' to prevent sexual harassment of employees in the course of their employment. It will also provide employment tribunals with the power to award a compensation uplift of up to 25 per cent in cases of sexual harassment where an employer has breached its duty to take reasonable steps to prevent such harassment.

The Act does not contain the originally-proposed reintroduction of employers' liability for third-party harassment (eg, harassment by clients, customers and others), which was deleted from the Worker Protection (Amendment of Equality Act 2010) Bill 2022–2023 in response to concerns that the provision would limit free speech and increase the regulatory burden on employers. The Labour Party has announced that, if elected, it will further amend the Equality Act 2010 to reintroduce a duty on employers to protect employees from third party harassment.

Further, in recent years, there has been considerable scrutiny of the use of non-disclosure agreements in light of concerns that they have been used unethically to silence victims of sexual harassment. In 2023, the Higher Education (Freedom of Speech) Act 2023 was enacted, which prevents English higher education institutions from entering into non-disclosure agreements (NDAs) with staff, students and others in relation to sexual abuse, sexual harassment, sexual misconduct and other types of bullying or harassment, and has prompted broader proposals and discussions around extending a similar ban to other workplaces. In light of this new law, MPs have called on the government to explore the improper use of NDAs in workplace settings more broadly. The Legal Services Board and the Solicitor's Regulation Authority have also weighed in on the improper use of NDAs and have acknowledged the need for further analysis and policy proposals to address the misuse of NDAs.

Ad hoc legislative changes

A new Employment Bill was originally promised in the Queen's Speech in December 2019, but was delayed throughout the covid-19 pandemic and, currently, there do not appear to be any plans to introduce a new Employment Bill. However, in the second half of 2022, the government announced its backing for a number of private member's bills that will create new workplace protections. A number of these bills have now been enacted, including the Neonatal Care (Leave and Pay) Act 2023, the Carer's Leave Act 2023 and the Protection from Redundancy (Pregnancy and Family Leave) Act 2023, each of which received Royal Assent on 24 May 2023:

- the Neonatal Care (Leave and Pay) Act 2023 introduces new rights to statutory neonatal care leave and neonatal care pay for employees who are parents of or who have another qualifying personal relationship to a child requiring neonatal care. The government will need to make regulations in order to bring these new rights into force, but it has indicated that it does not intend to enact these provisions until spring 2025;
- the Carer's Leave Act 2023 introduces a new right to at least one week's unpaid leave each year for employees providing or arranging care for a dependant with a long-term care need. Draft regulations (ie, the Carer's Leave Regulations 2024) were presented to Parliament on 11 December 2023, and are expected to come into force on 6 April 2024; and
- the Protection from Redundancy (Pregnancy and Family Leave) Act 2023 came into force on 24 July 2023 and permits regulations to be made to extend the right to be offered suitable alternative vacancies in redundancy situations during pregnancy and for a time after pregnancy or maternity, adoption or shared parental leave. Draft regulations (ie, the Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024) were presented to Parliament on 11 December 2023. If passed, the Regulations will create additional protections from redundancy after pregnancy or a period of maternity, adoption or shared parental leave. The expected implementation date for the Regulations is 6 April 2024.

Additionally, in response to the government's Good Work Plan: Proposals to support families, the government stated its intention to make paternity leave and pay legislation more flexible by allowing fathers and partners to split their two weeks of leave into 2 blocks of one week. Each one-week block can then be taken at any point within a year of the child's birth or adoption. On 11 January 2024, the government introduced the draft Paternity Leave (Amendment) Regulations 2024. From 6 April 2024, these Regulations will allow paternity leave to be taken in non-consecutive, one-week blocks at any time during the first year after birth or adoption.

Law stated - 26 February 2024