

EMPLOYMENT, INCENTIVES AND IMMIGRATION HORIZON SCANNER

1 JANUARY 2019 ONWARDS

FUTURE KEY LEGISLATIVE DEVELOPMENTS

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
1.	Companies (Miscellaneous Reporting) Regulations 2018.	<p>New company reporting requirements</p> <p>New company reporting requirements will be introduced requiring:</p> <ul style="list-style-type: none"> quoted companies with more than 250 UK employees to report annually on the ratio of CEO pay to the average pay of their UK workforce; large public and private companies to explain how their directors comply with the Companies Act 2006 requirement to have regard to employee and other stakeholders' interests; large private companies to report on their corporate governance arrangements (a company is treated as "large" if it has either more than 2,000 employees, or a turnover of more than £200m and a balance sheet total of more than £2billion); and listed companies to show what effect an increase in share prices will have on executive pay. 	The Regulations will apply to companies with accounting periods beginning on or after 1 January 2019.
2.	The Immigration (Restrictions on Employment)(Code of Practice and Miscellaneous Amendments) Order 2018 (SI 2018/1340)	<p>Illegal working</p> <p>Various changes will be made to legislation including:</p> <ul style="list-style-type: none"> allowing employers to rely on online checks to establish a statutory excuse against liability for a civil penalty in the event that they are found to be employing an illegal worker; permitting short birth or adoption certificates to be relied upon when evidencing an individual's right to work; and bringing into force a revised Code of Practice. 	28 January 2019
3.	European Union (Withdrawal Act) 2018. The Employment Rights (Amendment) (EU Exit) Regulations 2018 (draft).	<p>Britain's withdrawal from the European Union</p> <p>The European Union (Withdrawal) Act 2018 sets out the approach for converting existing EU legislation into UK law when Brexit takes place on 29 March 2019.</p>	29 March 2019

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
	<p>The Employment Rights (Amendment) (EU Exit) (No.2) Regulations 2018 (draft).</p> <p>The Equality (Amendment and Revocation) (EU Exit) Regulations 2018 (draft).</p> <p>Technical notice: "Workplace rights if there's no Brexit deal"</p>	<p>The draft employment-specific regulations specify the technical changes to be made to employment laws post-Brexit. The changes are technical in nature only, for example, removing EU-related references that will no longer be valid. The aim of the amendments is to ensure that the existing statutory framework continues to operate effectively in its current form after Brexit. However, as far as European Works Councils (EWCs) are concerned, the Government acknowledges that a reciprocal agreement from the EU would be required for the statutory framework to continue as it presently does. You can read the Government's explanatory note here.</p> <p>The Government has also published a technical notice on the impact of a "no deal" Brexit on workplace rights. The note states that the only potential impacts are in relation to EWCs (i.e. no new requests could be made to set up an EWC or information and consultation procedure) and employer insolvencies (i.e. employees working for a UK employer in the EU may not be protected by the national guarantee fund operating in that country). You can read the technical notice here.</p>	
4	Regulations will be required.	<p>National minimum wage: rates increase</p> <p>The national minimum wage hourly rates will be increased as follows:</p> <ul style="list-style-type: none"> • National Living Wage rate (for workers aged 25+): increase from £7.83 to £8.21. • Workers aged 21 – 25: increase from £7.38 to £7.70. • Workers aged 18 – 20: increase from £5.90 to £6.15. • Workers aged 16 – 17: increase from £4.20 to £4.35. • Apprentice rate: increase from £3.70 to £3.90. <p>In addition, the accommodation offset will increase from £7.00 to £7.55.</p>	1 April 2019
5.	Pensions auto-enrolment legislation.	<p>Pensions: auto-enrolment</p> <p>From 6 April 2019 the minimum contribution rates for defined contribution schemes will increase to 3% for employers (previously 2% as of 6 April 2018) and an overall total of 8% (previously 5% as of 6 April 2018) of the jobholder's qualifying earnings. The earnings trigger will remain at £10,000. The qualifying earnings lower limit will be £6,136 and the upper limit will be £50,000.</p>	6 April 2019

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6.	<p>The Employment Rights Act 1996 (Itemised Pay Statement) Order 2018 SI 2018/147.</p> <p>The Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) (No.2) Order 2018.</p> <p>These regulations will amend the ERA (section 8).</p>	<p>Itemised pay statements</p> <p>These regulations will require itemised pay statements to:</p> <ul style="list-style-type: none"> • be given to all workers (not just employees); and • contain information regarding the number of hours worked by the worker for which they are being paid. However, this will only apply where the worker's pay varies according to the number of hours worked. <p>The Government has published guidance on how the new regime will apply in different scenarios.</p>	6 April 2019
7.	<p>The Employment Rights (Miscellaneous Amendments) Regulations 2019 (draft).</p> <p>These regulations will amend the Employment Tribunals Act 1996 (section 12A).</p>	<p>Financial penalties for aggravated breach of a worker's employment rights</p> <p>The maximum financial penalty available for an aggravated breach of a worker's employment rights will increase from £5,000 to £20,000. The increased penalty will only apply to breaches occurring on or after 6 April 2019.</p>	6 April 2019
8.	<p>The Social Security Benefits Up-rating Order 2019 (draft)</p>	<p>Increased to rates of statutory payments for sick leave and family leave</p> <p>The weekly rates for various statutory payments will be increased as follows:</p> <ul style="list-style-type: none"> • Statutory sick pay (SSP): increase from £92.05 to £94.25. • Statutory maternity pay (SMP), statutory paternity pay (SPP), statutory adoption pay (SAP) and shared parental pay statutory shared parental pay (SSPP): increase from £145.18 to £148.68. • Statutory maternity allowance (SMA): increase from £145.18 to £148.68. 	<p>SSP = 6 April 2019</p> <p>SMP, SPP, SAP and SSPP = 7 April 2019</p> <p>SMA = 8 April 2019</p>
9.	<p>Cap:</p> <p>The Enterprise Act 2016 inserted new sections 153A-C into the Small Business, Enterprise and</p>	<p>Termination payments: restrictions on public sector exit payments</p> <p>Cap:</p> <p>The Enterprise Act 2016 will introduce a cap on the pre-tax value of public sector exit payments (including voluntary and compulsory redundancy and severance payments) of</p>	<p>Date tbc in 2019</p> <p>Cap:</p> <p>The power to make regulations under</p>

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	<p>Employment Act 2015 (SBEEA) which permit the introduction of new regulations.</p> <p>Public Sector Exit Payments Regulations 2016 (draft).</p> <p>Repayment:</p> <p>The SBEEA (sections 154-157) permits the introduction of new regulations.</p> <p>The Small Business, Enterprise and Employment Act 2015 (Commencement No 3) Regulations 2015.</p> <p>Repayment of Public Sector Exit Payments Regulations 2016 (draft).</p>	<p>£95,000. This will apply broadly across the public sector as defined by the list of public sector bodies set down by the Office of National Statistics (although some bodies may be exempted).</p> <p>Repayment:</p> <p>New regulations will be introduced by way of the SBEEA to require the repayment of exit payments (e.g. redundancy payments) where a high earning public sector employee or office holder (defined as any individual earning above £100,000) is subsequently re-employed in the public sector within 12 months, on a pro rata basis. A consultation on this issue closed on 25 January 2016. Amongst other things, this consultation proposed reducing the minimum earnings threshold to £80,000. Draft regulations have been published but are not yet in force.</p>	<p>the Enterprise Act 2016 came into force on 1 February 2017.</p> <p>The Public Sector Exit Payments Regulations 2016 are intended to come into force on a date to be confirmed.</p> <p>Repayment:</p> <p>Sections 154-157 of the SBEEA were brought into force on 1 January 2016. This gives the Secretary of State the power to make the relevant regulations.</p> <p>It is not yet known when The Repayment of Public Sector Exit Payments Regulations 2016 will come into force.</p>
10.	Enterprise Act 2016 (section 33, schedule 5).	Sunday trading: protection for shop workers	Date tbc in 2019

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		<p>There will be an extension of rights of shop workers in respect of Sunday working as follows:</p> <ul style="list-style-type: none"> they will be given the right to opt out of working compulsory additional hours (in excess of normal working hours) on a Sunday; and the duties on employers to notify workers of their rights about Sunday working will be extended. 	
11.	<p>The Trade Union Act 2016 (section 19) will amend the Trade Union and Labour Relations (Consolidation) Act 1992 to allow regulations to be introduced.</p> <p>The Trade Union (Financial Penalties) Regulations (draft).</p>	<p>Trade unions: financial penalties</p> <p>Regulations will be introduced which will empower the Certification Officer to impose financial penalties of up to £20,000 on trade unions if they fail to comply with certain statutory requirements.</p>	Date tbc in 2019
12.	<p>Children and Social Work Act 2017 (section 32) will introduce section 49C into the Employment Rights Act 1996 (ERA).</p> <p>New regulations will be required to extend the protection to children's social care job applicants.</p>	<p>Whistleblowing: protection for job applicants in children's social care positions</p> <p>Regulations will be introduced which prohibit relevant children's social care employers from discriminating against a job applicant because it is thought they have previously made a protected disclosure.</p>	Date tbc in 2019
13.	Unpaid Work Experience (Prohibition) Bill 2017 – 19.	<p>Private Members' Bill prohibiting unpaid internships</p> <p>This Private Members' Bill was introduced by Stewart Malcolm McDonald MP and will prohibit unpaid trial work periods in certain circumstances. The Bill provides that individuals undertaking work experience for a period exceeding 4 weeks must be paid the national minimum wage rate for their age group.</p>	<p>Date tbc in 2019</p> <p>The Bill has completed its passage through the House of Lords. It is now progressing through the House of Commons. The second reading of the Bill in the House of</p>

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			Commons is expected to take place on 25 January 2019.
14.	Workers (Definitions and Rights) Bill.	<p>Private Members' Bill amending the definition of worker</p> <p>This Private Members' Bill was introduced by Chris Stephens MP and seeks to introduce a single employment status for workers and employees for the purpose of employment rights and employer responsibilities. Under the Bill, the proposed definition of "worker" and "employee" is the same and covers an individual who is not genuinely operating a business on their own account and who:</p> <ul style="list-style-type: none"> • seeks to be engaged by another to provide labour; • is engaged by another to provide labour; or • where the labour has ceased was engaged by another to provide labour. <p>The Bill also contains provisions concerning hours of work covering areas such as: reasonable notice of shifts; payment for shift cancellations; right to regular and fixed hours; and employer requests for the worker to work additional hours. The Bill also contains provisions which would make contractors and end users jointly liable for unpaid wages of the contractor's employees.</p>	<p>Date tbc in 2019</p> <p>The second reading of the bill in the House of Commons is expected to take place on 25 January 2019.</p>
15.	Shared Parental Leave and Pay (Extension) Bill.	<p>Private Members' Bill on extended to shared parental leave and pay to self-employed contractors</p> <p>This Private Members' Bill was introduced by Tracy Brabin MP and seeks to extend shared parental leave and pay to self-employed contractors.</p>	<p>Date tbc in 2019</p> <p>The second reading of the bill in the House of Commons is expected to take place on 25 January 2019.</p>

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16.	Employment and Workers' Rights Bill 2017 – 2019.	<p>Private Members' Bill on employment and workers' rights</p> <p>This Private Members' Bill was introduced by Stephanie Peacock MP and seeks to improve rights for agency workers in a number of ways including:</p> <ul style="list-style-type: none"> removing the equal pay exemption from the Agency Workers Regulations 2010 (known as the Swedish derogation). Note that this reform is also included in The Agency Workers (Amendment) Regulations 2019 (draft) (see below); introducing a right for the agency worker not to be unfairly dismissed by the hirer; introducing a right for the agency worker to apply to the hirer for a contract of employment; and introducing a duty on the hirer to assess whether an agency worker has the right to a contract of employment. 	<p>Date tbc in 2019</p> <p>The second reading of the bill in the House of Commons is expected to take place on 25 January 2019.</p>
17.	National Living Wage (Extension to Young People) Bill 2017 – 19.	<p>Private Members' Bill extending the National Living Wage to young people</p> <p>This Private Members' Bill was introduced by Holly Lynch MP and seeks to extend the higher National Living Wage rate (currently £7.83 per hour) to those aged between 19 and 24.</p>	<p>Date tbc in 2019</p> <p>The second reading of the bill in the House of Commons is expected to take place on 25 January 2019.</p>
18.	<p>Parental Leave and Pay Arrangements (Publication) Bill 2017-19.</p> <p>This bill would amend the ERA and the Employment Tribunal Act 1996.</p>	<p>Requirement for large businesses to publish family leave and pay arrangements</p> <p>This Private Members' Bill was introduced by Jo Swinson MP and seeks to require employers with 250+ employees to publish information and parental leave and pay rights. Affected employers would be required to publish an annual statement of the entitlements of relevant employees to: (i) "parental leave"; (ii) related statutory pay; and (iii) other related pay and benefits. In this context, "parental leave" means: maternity leave, paternity leave, adoption leave, parental leave, shared parental leave, parental bereavement leave and any</p>	<p>Date tbc in 2019</p> <p>The second reading of the bill in the House of Commons is expected to take place on 25 January 2019.</p>

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		additional discretionary leave granted to relevant employees. The statement would also need to outline any qualifying conditions to parental leave and pay including any minimum period of service and any clawback arrangements that affect employees who leave employment after a period of parental leave.	
19.	The Small Business, Enterprise and Employment Act 2015 (SBEEA) (section 87) will amend the Companies Act 2006.	Company directors All company directors must be natural persons and not corporate entities.	Date tbc in 2019 Section 87 was due to come into force in October 2016 but has been delayed.
20.	Legislation to be drafted.	Pay: all tips to go to workers in full On 1 October 2018 the Government announced that new legislation is to be introduced "at the earliest opportunity" which will require that tips left for workers go to them in full. This is designed to tackle poor tipping practices in some sectors where excessive deductions are made from tips left by customers.	Date tbc in 2019
21.	The Employment Rights (Miscellaneous Amendments) Regulations 2019 (draft). The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 SI 2018/1378. These regulations will amend the ERA.	Written statements of employment particulars From 6 April 2020 written statements of employment particulars will: <ul style="list-style-type: none"> • be extended to all categories of worker (currently applies only to employees); • become a "Day 1" employment right; and • require the following additional information to be included: (i) the days of the week required to be worked; (ii) details of any terms and conditions relating to paid leave; and (iii) particulars of any other benefits, any probationary period and training. 	6 April 2020
22.	The Employment Rights (Miscellaneous Amendments) Regulations 2019 (draft).	Information and consultation of employees	6 April 2020

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	These regulations will amend the Information and Consultation of Employees Regulations 2004 (part 4).	The percentage of employees required for a valid request to start negotiating an agreement on informing an consulting employees will be lowered from 10% to 2%	
23.	<p>The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 SI 2018/1378.</p> <p>These regulations will amend the Working Time Regulations 1998.</p>	<p>Holiday pay: reference periods used for calculating holiday pay</p> <p>Where a worker has variable pay either because:</p> <ul style="list-style-type: none"> • they have no normal working hours; or • they have normal working hours but their pay varies with the amount of work done or the time the work is done, <p>then the reference period to be used for calculating holiday pay will be changed. Where the worker has been employed for at least 52 weeks, the reference period is increased from 12 weeks to 52 weeks. Where the worker has been employed for fewer than 52 weeks then the reference period is the number of weeks the worker has been employed. This reform does not apply to workers who have normal working hours and non-variable pay.</p>	6 April 2020
24.	<p>The Agency Workers (Amendment) Regulations 2019 (draft)</p> <p>These regulations will amend the Agency Workers Regulations 2010.</p>	<p>Agency workers: repeal of the "Swedish derogation" and related rights</p> <p>These regulations will improve rights for agency workers by:</p> <ul style="list-style-type: none"> • removing the equal pay exemption from the Agency Workers Regulations 2010 (known as the Swedish derogation); • requiring the agency to notify the agency worker about their right to be the same conditions as those employed directly by the hirer as of 6 April 2020 (i.e. that the Swedish derogation no longer applies); and • introducing a right for the agency worker not to be unfairly dismissed or subjected to a detriment for a reason relating to the 2019 regulations. 	6 April 2020
25.	Legislation to be drafted	<p>Reforms to the operation of the IR35 regime in the private sector</p> <p>In the 2018 Budget the Government announced plans to extend the changes it made to the operation of the off payroll working rules (IR35) in the public sector, to certain medium and large sized private sector businesses. Under the proposed reform it is likely that the responsibility for</p>	6 April 2020

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		assessing whether the IR35 regime applies will move to the party that is closest to the personal service company in the relevant contractual chain. In a simple chain involving the individual, the PSC and the end-user, this would mean the end-user would have to make that assessment. If the IR35 regime does apply then, in this scenario, the end user would become responsible for deducting income tax and employee NICs and would also be responsible for paying employer NICs. A further consultation is due "in the coming months" and draft legislation expected in Summer 2019.	
26.	National Insurance Contributions Bill.	<p>Termination payments: changes to the national insurance treatment of termination payments</p> <p>Employer NICs will become payable on all termination payments above £30,000 (which are currently only subject to income tax). The first £30,000 of any termination payment will remain exempt from income tax and the entirety of the payment will remain exempt from employee NICs. This reform was initially due to come into force in 2018. It was delayed until 6 April 2019 and has been further delayed to 6 April 2020.</p>	6 April 2020
27.	Parental Bereavement (Leave and Pay) Act 2018 Supporting regulations to be published	<p>New right to statutory parental bereavement leave and pay</p> <p>From 2020, employed parents who lose a child below the age of 18 (including a still birth after 24 weeks) to 2 weeks' statutory leave to be taken within 56 days of the child's death. Employees who have at least 26 weeks' service at the time will also be entitled to receive 2 weeks' statutory pay at the lower of either the prescribed rate or 90% of their average earnings. Employers will be able to recover some or all of this payment from the Government.</p> <p>You can read our full report on the proposal when it was at Bill stage here.</p>	<p>April 2020</p> <p>The Act received Royal Assent on 13 September 2018. Supporting regulations have yet to be published. The Act and Regulations are expected to come into force by April 2020.</p>

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28.	Various shared parental leave and pay regulations will be affected.	<p>Shared parental leave: extension of leave and pay to working grandparents</p> <p>In 2015 the Government announced plans to extend shared parental leave and pay to working grandparents by 2018. A public consultation on this proposal was due to commence in May 2016, but was postponed until after the EU referendum. It is not yet clear if or when the consultation will commence.</p>	Unknown

FUTURE KEY CASES

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
1.	Uber B.V. v Aslam	<p>Worker status: are Uber taxi drivers workers?</p> <p>The EAT decided that taxi drivers engaged by Uber were workers, rather than self-employed contractors. The consequence is that the drivers will be entitled to certain employment rights such as to be paid in accordance with the National Minimum / Living Wage and protections under the Working Time Regulations 1998 (e.g. rest breaks and paid holiday). You can read our full report on the decision here.</p> <p>The Court of Appeal upheld the decision. Uber has indicated it will seek permission to appeal to the Supreme Court.</p>	<p>The Court of Appeal judgment was handed down on 19 December 2018.</p> <p>Awaiting decision on permission to appeal to the Supreme Court.</p>
2.	Independent Workers of Great Britain (IWGB) v Central Arbitration Committee (University of London)	<p>Worker status: are outsourced staff also workers of the end-user?</p> <p>The IWGB applied to the Central Arbitration Committee (CAC) for trade union recognition. As part of that application the CAC had to decide whether outsourced staff (security guards, porters, receptionists, post-room staff and AV staff) employed by Cordant Security were also workers engaged by the University of London. If they were not workers of the University then the application for trade union recognition would fail.</p> <p>On 10 January 2018, the CAC rejected the application on the grounds that the staff were not workers of the University due to the absence of a contract between the parties. You can read our full report on the CAC decision here.</p> <p>The IWGB were granted permission to have the CAC's decision judicially reviewed by the High Court. BEIS have been joined as an intervener.</p>	<p>The High Court hearing took place on 26 February 2019. Awaiting judgment.</p>
3.	Lock v British Gas Trading Ltd	<p>Holiday pay: inclusion of commission payments in holiday pay</p> <p>The Court of Appeal ruled that the Working Time Regulations 1998 can be interpreted to provide that holiday pay must include relevant commission payments. The Court decided that</p>	<p>Awaiting Employment Tribunal listing.</p>

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		<p>when faced with the question of whether a conforming interpretation can be adopted, the Courts should not confine themselves to the literal meaning of the legislation, but should consider whether such an interpretation is in line with the "grain" of the law. The Court decided that it could be presumed that the UK Government intended to fulfill entirely the obligations arising under the Working Time Directive, including those which were not apparent at the time the Directive was implemented such as the requirement for holiday pay to be "normal pay". You can read our full report on the decision here. British Gas was refused permission to appeal to the Supreme Court. You can read our report on the implications of the refusal here.</p> <p>The case is due to return to the Employment Tribunal to assess how Mr. Lock's holiday pay should have been calculated, however, there has been speculation that the parties are close to settling.</p>	
4.	Royal Mail Group Ltd v Jhuti	<p>Whistleblowing: knowledge of a protected disclosure and detriment claims</p> <p>The Court of Appeal held that a dismissal will not be automatically unfair for having made a protected disclosure where the dismissing officer: (i) did not know that protected disclosures had been made; and (ii) had been misled by the employee's line manager to believe that the reason for dismissal was poor performance.</p> <p>Separately, the Court also decided that a claimant can bring a detriment claim in respect of a co-worker's actions which led to the dismissal (in this case, the line manager's alleged manipulation of the process) and they could pursue post-dismissal losses against the colleague and/or the employer (who is potentially vicariously liable for a co-worker's detriments unless there is a "reasonable steps" defence).</p> <p>An appeal of part of the decision will be heard by the Supreme Court in 2019.</p>	<p>The Court of Appeal judgment was handed down on 20 October 2017.</p> <p>The Supreme Court hearing is due to take place on 12 – 13 June 2019.</p>
5.	Asda Stores Ltd v Brierley	<p>Equal pay: female supermarket workers able to compare themselves to male depot workers</p> <p>This case concerns whether women working in Asda stores should be paid the same as men working in its distribution warehouses on the grounds that the roles are of equal value. The</p>	<p>The Court of Appeal's reserved judgment was handed down on</p>

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		<p>case is notable as it is the first large-scale equal pay claim brought against a private-sector employer.</p> <p>A Preliminary Hearing was held in June 2016, and judgment delivered in October 2016, where it was decided that the female retail workers were entitled to compare themselves to the male depot workers. The Tribunal's decision was subsequently upheld by the EAT who decided that the male depot workers were appropriate comparators for an equal value claim both under the Equality Act 2010 and under EU law. You can read our full report on the decision here.</p> <p>An appeal of the decision was heard by the Court of Appeal in 2018. The Court of Appeal upheld the decisions of the Tribunal and EAT.</p>	31 January 2019.
6.	<p>Ali v Capita Customer Management</p> <p>Hextall v Chief Constable of Leicestershire Police</p>	<p>Sex discrimination and shared parental leave: is it discriminatory to pay enhanced maternity pay to women and statutory shared parental pay to men?</p> <p>In <i>Ali</i> the EAT held that the practice of differentiating pay was not directly discriminatory because the male employee was not entitled to compare himself to a woman on maternity leave. However, in <i>Hextall</i> the EAT overturned a decision that such a practice was not indirectly discriminatory and remitted the claim for a rehearing. You can read our report on both decisions here.</p> <p>Appeals in both cases will be heard together by the Court of Appeal in 2019.</p>	The Court of Appeal hearing of both cases is due to take place on 1 May 2019.
7.	Various claimants v WM Morrison Supermarkets Plc	<p>Vicarious liability: was the employer liable for a data breach committed by a rogue employee?</p> <p>The High Court held that the employer was vicariously liable for a data breach committed by a rogue employee which resulted in the personal data of almost 100,000 of the employer's staff being shared online. The information shared online include employees' bank, salary and national insurance details. The Court of Appeal upheld the decision.</p> <p>The employer has applied for permission to appeal to the Supreme Court.</p>	<p>The Court of Appeal judgment was handed down on 22 October 2018.</p> <p>Awaiting decision on permission to</p>

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			appeal to the Supreme Court.
8.	Tillman v Egon Zehnder	<p>Restrictive covenants: was a covenant which prevented the employee from having a minor shareholding in a competing company too wide?</p> <p>The Court of Appeal overturned the High Court's decision that a 6-month non-compete restriction was enforceable against an employee who rose from consultant to partner within a relatively short period of time. The Court of Appeal overturned this decision on the basis that the covenant prohibited the employee from holding a minor shareholding in a competing business for investment purposes. This meant that the covenant was impermissibly wide and unenforceable. On the question of severance, the Court held it was only able to sever separate covenants, which was not the case here. It was not prepared to rewrite the covenant to make it work. In any event, even if the offending words ("<i>interested in</i>") could be severed, the remainder of the phrase ("<i>engaged or concerned</i>") would still be too wide on the grounds that a minor shareholder can be said to be "<i>concerned in</i>" the company. You can read our report on the Court of Appeal's decision here.</p> <p>An appeal of the decision was heard by the Supreme Court in 2019.</p>	The Supreme Court hearing took place on 21-22 January 2019. Awaiting judgment.
9.	Chief Constable of Norfolk v Coffey	<p>Disability discrimination: does direct disability discrimination encompass perceived disability discrimination?</p> <p>The EAT found that section 13 of the Equality Act 2010 was "<i>wide enough to encompass perceived discrimination</i>" and "<i>makes no distinction....between the protected characteristic of disability and other protected characteristics</i>". However, a complaint of perceived disability discrimination will be no less challenging than a complaint of actual disability discrimination. The fact that the perception must encompass the requirements of section 6 of the Act indicates that these cases will turn on the alleged discriminator's precise understanding of the claimant's health. You can read our report on the EAT's decision here.</p> <p>An appeal of the decision will be heard by the Court of Appeal in 2019.</p>	The Court of Appeal took place on 19 – 20 February 2019. Awaiting judgment.

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10.	Agoreyo v The Mayor and Burgesses of the London Borough of Lambeth	<p>Conduct: did a knee-jerk suspension amount to a breach of the implied term of trust and confidence?</p> <p>The High Court found that the suspension of a teacher amounted to a breach of the implied term of trust and confidence. The suspension letter stated that the purpose of the suspension was to ensure a fair investigation. The Court rejected the notion that the employer was bound to suspend the employee of on child-safety grounds, given the stated purpose of the suspension. Furthermore, in the lead up to the suspension there had been no attempt to obtain the employee's version of events, no consideration of alternatives to suspension and the suspension letter did not explain why an investigation could not be conducted fairly without a suspension. This led to the conclusion that the suspension was a knee-jerk reaction sufficient to amount to a repudiatory breach of trust and confidence.</p> <p>An appeal of the decision will be heard by the Court of Appeal in 2019.</p>	The Court of Appeal hearing took place on 29 January 2019. Awaiting judgment.
11.	Royal Mencap Society v Tomlinson-Blake	<p>National minimum wage: was there a requirement to pay care workers for hours spent sleeping during sleep-in shifts?</p> <p>The Court of Appeal held that workers are not entitled to be paid the national minimum wage for sleep-in shifts where the expectation is that they will sleep but be on-call to deal with emergencies. This meant that the worker was only entitled to be paid for the hours in which they were awake for the purpose of working. It was irrelevant that they may have been required to have a "listening ear" for any issues requiring their attention. Nor was it relevant that their liberty was restricted. You can read our report on the Court of Appeal's decision here.</p> <p>The employee has been granted permission to appeal to the Supreme Court.</p>	The Court of Appeal decision was handed down on 13 July 2018. Awaiting Supreme Court listing.
12.	X v Y Ltd	<p>Legal advice privilege: advice on how to cloak discrimination could be iniquitous resulting in the loss of privilege</p> <p>Legal advice privilege protects advice given by lawyers to their clients. However, where there is a <i>prima facie</i> case that such advice was given to perpetrate or further iniquity, privilege will fall away. In this case, the EAT confirmed that advising a client how to disguise unlawful</p>	The EAT judgment was handed down on 9 August 2018. The Court of Appeal hearing

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		<p>discrimination could be iniquitous, however, merely warning of the potential for a discrimination claim to be brought would not be enough.</p> <p>An appeal of the decision will be heard by the Court of Appeal in 2019.</p>	<p>is due to take place on 2 October 2019.</p>
13.	Flowers v East of England Ambulance Trust	<p>Holiday pay: should voluntary overtime payments be reflected in holiday pay?</p> <p>The EAT ruled that the Working Time Directive gives rise to an entitlement to have voluntary overtime payments reflected in holiday pay provided that such payments represent "normal pay". The question of whether such payments count as normal pay must be assessed on a case-by-case basis. In addition, the EAT ruled that the claimants in this case had a contractual entitlement to have voluntary overtime payments reflected in their holiday pay. You can read our report on the EAT's decision here.</p> <p>An appeal of the decision will be heard by the Court of Appeal in 2019.</p>	<p>The EAT decision was handed down on 5 July 2018.</p> <p>The Court of Appeal hearing is listed to float on 14 – 15 May 2019.</p>

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