

EMPLOYMENT AND IMMIGRATION HORIZON SCANNER



September 2021

FUTURE KEY LEGISLATION DEVELOPMENTS

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
1.	Extended Coronavirus Job Retention Scheme	<p>Extended Coronavirus Job Retention Scheme</p> <p>In the Budget on 3 March 2021, the Chancellor announced that the Coronavirus Job Retention Scheme (CJRS) would be extended until 30 September 2021. The level of grant available to employers under the scheme stayed the same until 30 June 2021, with tapering off provisions applying from 1 July 2021.</p> <p>Until 30 June 2021 the government continued to pay 80% of wages up to a cap of £2,500 and employers paid employer National Insurance Contributions (NICs) and pension contributions only for the hours that the employee did not work (as well as pay for any hours worked in the normal way). From 1 July 2021, the level of grant was reduced, with employers contributing towards the cost of furloughed employees' wages, as follows:</p> <ul style="list-style-type: none"> • From 1 July 2021, the government paid 70% of wages up to a cap of £2,187.50, with employers paying 10% of wages up to a cap of £312.50, as well as NICs and pension contributions; • From 1 August – 30 September 2021, the government is paying 60% of wages up to a cap of £1,875, with employers paying 20% of wages up to a cap of £625, as well as NICs and pension contributions; <p>To be eligible for the grant employers must continue to pay furloughed employees 80% of their wages, up to a cap of £2,500 per month for the time they spend on furlough. Flexible or full-time furloughing continues to be allowed. Claims must be submitted by 11.59pm 14 calendar days after the month claimed for. Employers cannot claim for any days during which a furloughed employee is serving a contractual or statutory notice period.</p> <p>HMRC's guidance for employers explains how the extended CJRS operates (Check which employees you can put on furlough and Check if you can claim for your employees' wages). A Seventh Treasury Direction extends the CJRS until 30 September 2021 and covers the scheme from 1 May to 30 September 2021. The previous Treasury directions continue to have effect but are modified by the Seventh Treasury Direction.</p>	Ongoing until 30 September 2021
2.	Closure of COVID-19 SSP Rebate Scheme	<p>Closure of COVID-19 SSP Rebate Scheme</p> <p>Regulations will come into force on 30 September 2021 to close the COVID-19 SSP Rebate Scheme through which eligible employers with fewer than 250 employees (as at 28th February 2020) could apply to HMRC for reimbursement of Statutory Sick Pay (SSP) paid for sickness absence due to Covid-19. The Scheme will close with effect from 30 September 2021 and any absence by reason of Covid-19 after that date will not be eligible for a rebate. Funding of SSP will revert to being met entirely by the employer. Employers will have until 31 December 2021 to submit any claims for eligible SSP costs incurred up to 30 September 2021.</p>	30 September 2021

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3.	Gender Pay Gap Information Regulations	<p>Gender Pay Gap Reporting Deadline Extension</p> <p>As a result of the continuing effects of the pandemic, the Equality and Human Rights Commission (EHRC) has suspended enforcement of the gender pay gap reporting deadlines for 2020-21 until 5 October 2021. Under the regulations, public sector bodies and private sector employers are required to submit their gender pay gap reports by 30 March and 4 April each year respectively. The suspension gives employers an additional six months to comply with the reporting obligations for 2020-21 although employers are encouraged to report before the deadline where possible.</p>	5 October 2021
4.	The Employment Tribunals (Constitution and Rules of Procedure) (Early Conciliation: Exemptions and Rules of Procedure) (Amendment) Regulations 2021, SI 2021/1037	<p>Employment Tribunals procedure (reasonable notice of preliminary hearings)</p> <p>From 6 October 2021, the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 will be amended to provide for tribunals to give parties reasonable notice of a preliminary hearing (and in the case of a hearing involving any preliminary issues, at least 14 days' notice).</p>	6 October 2021
5.	Health and Social Care Regulations	<p>Compulsory vaccinations of care home workers</p> <p>Following a consultation which ran from April to May 2021, regulations have been made which will come into force on 11 November 2021 and will require staff employed in registered care homes to be fully vaccinated unless they are exempt.</p>	11 November 2021
6.	The Employment Tribunals (Constitution and Rules of Procedure) (Early Conciliation: Exemptions and Rules of Procedure) (Amendment)	<p>Employment Tribunals procedure (number of respondents on early conciliation form)</p> <p>From 1 December 2021 the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 will be amended to allow a prospective claimant to provide the names of more than one prospective respondent on an early conciliation form presented under Rule 2 (or in a telephone call made to ACAS under Rule 3).</p>	1 December 2021

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	Regulations 2021, SI 2021/1037		
7.	Finance Bill 2022 Health and Social Care Levy Bill 2021-22	<p>Health and social care levy and changes to national insurance contributions</p> <p>On 7 September 2021, the government announced a temporary increase of 1.25% in the rates of dividend tax and in the rates of some National Insurance Contributions (NIC) from April 2022, to be replaced by a new health and social care levy based on National Insurance in April 2023.</p> <ul style="list-style-type: none"> • From April 2022, NIC will be increased by 1.25% for a temporary period ending when the levy becomes chargeable. The NIC increase will apply to classes 1 (employee and employer) and 4 (self-employed), both main and higher rates, but will not affect the flat rates for the self-employed (class 2) and voluntary contributions (class 3). Existing NIC reliefs for employers will continue to apply (including to the later levy). • From April 2023, the NIC increase will be replaced by the introduction of a new health and social care levy on the earnings or profits of persons who pay national insurance contributions, to cover the costs of health and social care. <p>The rate increase will be legislated for in the Finance Bill 2022, with the levy enacted by a Health and Social Care Levy Bill (H&SC Bill). The H&SC Bill completed its passage in the House of Commons on 14 September 2021 and was read for the first time in the House of Lords on 15 September 2021. The second reading and all remaining stages before the House of Lords are due to take place on 11 October 2021.</p>	April 2022
8.	Right to work checks: COVID-19 concession extended	<p>Right to work checks: COVID-19 concession extended</p> <p>The Home Office is currently operating a temporary concession due to COVID-19, to allow for remote right to work checks on candidates. Checks must be still made on all new employees as part of the onboarding process (regardless of nationality) and on existing employees where they are working on a time-limited visa, but rather than requiring physical checks, employers have been able to use the following processes:</p> <ul style="list-style-type: none"> • checks over video calls; • scanned documents or a photo of documents for checks using email or a mobile app, rather than originals (marking a digital copy of the document as “adjusted check undertaken on [insert date] due to COVID-19”); and • to the extent that a prospective or existing employee cannot provide any of the accepted documents, employers can use the Home Office's Employer Checking Service. <p>This concession will now end on 5 April 2022 (originally it was due to end on 17 May before being delayed until 20 June and then 31 August) meaning that employers must revert to conducting full right-to-work checks from 6 April 2022.</p>	6 April 2022

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		<p>From 6 April 2022 employers will need to either check the applicant's original documents in person or check their right to work online (for those holding biometric residence permits or holding status under the EU settlement scheme or points-based system). If it's not possible for an employer to check the original documents in person, the applicant can post these to the employer who should check the physical original documents whilst conducting a live video call with the applicant.</p> <p>Employers won't have to conduct retrospective checks on those people who were subject to the COVID-19-adjusted regime between 30 March 2020 and 5 April 2022.</p>	
9.	Employment Bill 2021-22	<p>New Employment Bill</p> <p>In the Queen's Speech on 19 December 2019, the Government announced that a new Employment Bill would be brought forward, to seek to protect and enhance workers' rights post-Brexit. The Bill is aimed at promoting fairness in the workplace, with the main elements including:</p> <ol style="list-style-type: none"> 1. Creating a new, single enforcement body to offer better protection for workers; 2. Ensuring that workers receive the tips left for them in full; 3. Introducing a new right for all workers to request a more predictable contract; 4. Extending redundancy protections to prevent discrimination against women and new parents (see separate entry); 5. Allowing parents to take extended leave for neonatal care; 6. Introducing an entitlement to one week's leave for unpaid carers; and 7. Subject to consultation, making flexible working the default unless employers have good reason not to. <p>On 16 March 2020, the Government confirmed that a new entitlement of up to 12 weeks' statutory leave and pay would be included in the Employment Bill to help support parents of babies requiring neonatal care. Costings within the Spring 2020 budget suggest that this new statutory right is likely to be introduced in 2023.</p> <p>On 26 April 2021, the Guardian reported that the Trade Union Congress, Maternity Action and the Fawcett Society are campaigning for the government to reform the underused shared parental leave scheme and to replace it with a new model of parental leave (within the new Employment Bill) which would give both parents non-transferable paid leave to care for their child.</p> <p>In the Queen's Speech on 11th May 2021 there was no mention of the Employment Bill but it was reported that it will be introduced "when the time is right". On 25th May 2021, Paul Scully MP, the Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (BEIS) confirmed that, alongside the Secretary of State, he</p>	<p>The draft Employment Bill is expected to be published when parliamentary time allows</p> <p>The consultation on flexible working is due to close on 1 December 2021</p>

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		<p>intends to bring in the long-awaited Employment Bill "when parliamentary time allows".</p> <p>On 22 September 2021, the government launched a consultation about flexible working which considers making the right to request flexible working a 'day one' right. The consultation closes on 1 December 2021.</p>	
10.	Regulations will be required	<p>Confidentiality clauses and non-disclosure agreements</p> <p>In July 2019, BEIS published the Government's response to its consultation on changes to regulations on confidentiality clauses, also known as non-disclosure agreements (NDAs). The final proposals include legislating to limit NDAs from restricting disclosures being made to police, regulated health care professionals and legal professionals. The consultation had been launched in response to concerns that some employers had been using confidentiality clauses to "gag" victims of workplace harassment or discrimination.</p> <p>Final proposals in the Government response include:</p> <ul style="list-style-type: none"> • legislating so that limitations in NDAs are clearly set out in employment contracts and settlement agreements • creating guidance for solicitors and legal professionals responsible for drafting settlement agreements • legislating to enhance the independent legal advice received by individuals signing confidentiality clauses • enforcement measures for confidentiality clauses that do not comply with legal requirements in written statements of employment particulars and settlement agreements. <p>Once the draft legislation has been published, employers will need to review confidentiality clauses and settlement agreements to ensure that they comply with the new rules.</p>	TBC
11.	Regulations will be required	<p>Extending redundancy protection for women and new parents</p> <p>The Government announced in July 2019 that it intended to enhance redundancy protections for pregnant women and new parents. This had been a commitment in the Government's Good Work Plan (in response to the Taylor Review) and had been raised by the Women and Equalities Select Committee. In summary, the Government committed to:</p> <ul style="list-style-type: none"> • ensure that the redundancy protection period applies from the point that the employee informs the employer that she is pregnant, whether orally or in writing; • extend the redundancy protection period by/to six months once a new mother has returned to work; 	TBC

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		<ul style="list-style-type: none"> • extend redundancy protection into a period of return to work for those taking adoption and shared parental leave; and • establish a taskforce of employer and family representative groups (to make recommendations on what improvements can be made to the information available to employers and families on pregnancy and maternity discrimination and develop an action plan on what steps Government and other organisations can take to make it easier for pregnant women and new mothers to stay in work). <p>In the Queen's Speech on 19 December 2019, the Government announced that a new Employment Bill (see above) would be brought forward which would include these proposals. Although the Queen's Speech of 11 May 2021 failed to mention the Employment Bill, the Government has recently confirmed that it still intends to extend the redundancy protection period afforded to mothers on maternity leave, with measures to be brought forward "as soon as parliamentary time allows".</p>	
12.	Regulations will be required	<p>Duty to prevent harassment in the workplace</p> <p>On 21 July 2021, the government published its response to the 2019 consultation on workplace sexual harassment in which it confirmed it would introduce a new duty on employers to prevent sexual harassment and third party harassment in the workplace. The government will also look closely at the possibility of extending time limits for claims under the Equality Act 2010 from three to six months. The response comes two years after the consultation took place which looked at:</p> <ul style="list-style-type: none"> • introducing a new mandatory duty on employers to protect workers from harassment and victimisation in the workplace; • strengthening and clarifying laws in relation to third party harassment; • whether interns are adequately protected by the Equality Act 2010 (the EqA) and the possibility of extending protection under the EqA to volunteers; and • extending employment tribunal time limits in the EqA from three months to six months. <p>It is expected that employers will be required to take "all reasonable steps" to prevent harassment and that an incident will need to have occurred before an individual can make a claim. The government will engage with affected stakeholders to ensure that the new legislation works properly when applied to real workplaces.</p> <p>There is no immediate date for when the new mandatory duty will be introduced, other than as soon as Parliamentary time allows.</p>	TBC

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13.	Directive on the protection of persons reporting on breaches of EU law	<p>Whistleblowing: compliance with new EU directive</p> <p>In April 2019 the European Parliament approved a draft Directive which provides that public and private organisations with more than 50 employees will have to set up internal reporting channels that would allow people to report breaches of EU law within the organisation. In addition, national authorities will have to establish external reporting channels.</p> <p>The draft Directive provides for implementation by EU Member States by 17 December 2021. As the UK has now left the EU, it is free to ignore any future/new EU Directives, although the rebalancing provisions in the UK-EU Trade and Co-operation Agreement (TCA) state that if UK employment rights diverge significantly from the EU in a way that materially impacts trade or investment (based on reliable evidence and not merely on conjecture or remote possibility), then the EU can take “appropriate rebalancing measures” (including tariffs), subject to an arbitration process.</p> <p>Although the UK already has whistleblowing legislation, this would need to be adapted / enhanced to align fully with the Directive – such as being expanded upon to include things like obliging employers to give feedback to whistleblowers and protecting a wider range of whistleblowers such as freelancers and shareholders. It remains to be seen whether the UK will take steps to implement any aspects of the Directive.</p> <p>On 22 March 2021, the Department for Business, Energy and Industrial Strategy (BEIS) committed to reviewing its whistleblowing protections following the publication of data by whistleblowing advice service Protect which revealed that one in four COVID-19 whistleblowers who contacted its advice line were dismissed between September 2020 and March 2021. BEIS advised that it is considering the scope and timing of its whistleblowing review and is planning to introduce a single body to enforce workers' rights, including whistleblower protection, as part of the forthcoming Employment Bill.</p>	<p>The Directive requires implementation by Member States by 17 December 2021.</p> <p>As the UK has now left the EU, it is unclear whether the UK will take steps to implement any aspects of the Directive.</p>
14.	National Disability Strategy	<p>National Disability Strategy: removing barriers faced by disabled people in all aspects of their lives including work and business</p> <p>On 28 July 2021 the government published a National Disability Strategy setting out various steps that it will take to remove barriers faced by disabled people in all aspects of their lives including work, justice, politics, transport, housing and leisure services.</p> <p>It has also promised further support to disabled apprentices, including investigating the barriers faced by disabled people in undertaking apprenticeships and how to address them, with results due to be published in February 2022.</p> <p>The government plans to launch a consultation before the end of 2021 on workforce disability reporting (including voluntary and mandatory reporting).</p>	<p>Workplace disability reporting consultation due to be launched by the end of 2021</p> <p>Findings on apprenticeship barriers to be published in February 2022</p>

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15.	Directive on work-life balance for parents and carers	<p>Work-life balance for parents and carers</p> <p>This Directive is designed to increase the participation of women in the labour market and provides for an individual right to four months of parental leave, from which two months are non-transferable between the parents, paid at a level set by Member States. It also introduces carers' leave so that workers caring for relatives in need are able to take 5 working days per year for that purpose.</p> <p>The Directive came into force on 1 August 2019 and must be implemented by Member States within three years thereafter. As the UK has now left the EU, it is free to ignore any new EU directives, although the rebalancing provisions in the TCA state that if UK employment rights diverge significantly from the EU in a way that materially impacts trade or investment (based on reliable evidence and not merely on conjecture or remote possibility), then the EU can take "appropriate rebalancing measures" (including tariffs), subject to an arbitration process.</p> <p>The UK is proposing to introduce carers' leave in the forthcoming Employment Bill and already goes further than the draft Directive with regard to flexible working rights, although some adjustments in other areas would still be needed to align fully, such as to scrap the service requirement for paternity leave and to allow shared parental leave to operate in a way that can be exercised independently by each partner.</p>	<p>The Directive came into force on 1 August 2019 and must be implemented by Member States within three years.</p> <p>As the UK has now left the EU, it is unclear whether the UK will take steps to implement any aspects of the Directive.</p>
16.	New legislation will be required	<p>Consultations on measures to: (a) ban or impose mandatory compensation for non-compete clauses; and (b) extend the ban on exclusivity clauses to contracts of employment where the guaranteed weekly wage is less than the lower earnings limit</p> <p>Driven by the need to be more competitive in the post-Covid-19 world, the Government consulted in February 2021 on measures to reform post-termination non-compete clauses in contracts of employment.</p> <p>Broadly, two measures to reform post-termination non-compete clauses in contracts of employment were proposed:</p> <p>(1) To impose mandatory compensation for the post-employment period that the employer wishes the employee to be restricted (similar to other jurisdictions such as France, Germany and Italy). Two complementary measures (transparency and a maximum period of non-compete), were also being considered alongside this option.</p> <p>(2) Alternatively, the other proposed measure was to ban non-compete clauses altogether (as is the case in California)</p> <p>In a separate consultation, the government also sought views on a proposal to extend the ban on exclusivity clauses to contracts where the workers' guaranteed weekly income is less than the Lower Earnings Limit (currently £120).</p> <p>Both consultations closed on 26 February 2021 and the Government's response is awaited.</p>	TBC

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17.	New legislation will be required	<p>Menopause discrimination in the workplace</p> <p>In July 2021 the House of Commons Women and Equalities Committee launched an inquiry into existing discrimination legislation and workplace practices around the menopause. The inquiry is seeking views on the extent of discrimination faced by menopausal people in the workplace and how government policy and workplace practices can better support those experiencing the menopause. The inquiry closed on 17 September 2021 and we await the government's findings.</p>	TBC

FUTURE KEY CASES

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
1.	Stojsavljevic v DPD Group Ltd	<p>Employment status: whether individuals working for a parcel collection and delivery business under a franchise agreement were workers</p> <p>In this case, the ET held that the two claimants, Mr Stojsavljevic and Mr Turner, who had each been engaged by the respondent between 2013 and 2017 under Franchise Agreements, were not employees or workers under the Employment Rights Act 1996.</p> <p>The claimants have appealed the decision to the EAT and the hearing date took place on 9-10 March 2021.</p>	<p>Heard by the EAT on 9-10 March 2021. Awaiting judgment.</p>
2.	Kostal UK v Dunkley	<p>Collective bargaining: a temporary direct contractual offer to circumvent collective bargaining was not a "prohibited result" under TULR(C)A 1992</p> <p>The Court of Appeal recently ruled on the meaning of the "prohibited result" for the purposes of section 145B of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A 1992) and found that a direct offer made by an employer in connection with pay and changes to terms of employment was not unlawful because it was intended to bypass collective bargaining on a temporary basis only. An unlawful "prohibited result" would only occur where the purpose of the offer was to permanently stop collective bargaining in relation to those terms.</p> <p>Unite (the union representing the Claimants) has been granted permission to appeal to the Supreme Court and the appeal was heard on 18 May 2021.</p>	<p>Heard by the Supreme Court hearing on 18 May 2021. Awaiting judgment.</p>
3.	Pitcher v Oxford University (joined with Ewart v Oxford University)	<p>Age discrimination: when can an employer justify a set retirement age?</p> <p>In these conjoined cases, both claimants challenge a University retirement policy of 67. The Employment Tribunal held that the relevant policies did have legitimate aims in both cases. In <i>Pitcher</i> the Tribunal agreed with the University that it was proportionate means, but in <i>Ewart</i> the Tribunal rejected the University's arguments to find it was not proportionate. Both decisions have been appealed to the EAT and were heard together on 29 June – 1 July 2021.</p>	<p>Heard by the EAT on 29 June 2021 - 1 July 2021. Awaiting judgment.</p>
4.	R (on the application of Cornerstone (North East) Adoption and Fostering Service Ltd) v Office for Standards in Education, Children's Services and Skills	<p>Sexual orientation: did a policy to only recruit foster carers who were heterosexual evangelical Christians amount to unlawful discrimination?</p> <p>The High Court held that the policy of an independent fostering agency to only recruit foster carers who were heterosexual evangelical Christians was unlawfully discriminatory on the</p>	<p>Heard by the Court of Appeal on 29 – 30 June 2021. Awaiting judgment.</p>

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		grounds of sexual orientation, but not on the grounds of religious belief. The case has been appealed to the Court of Appeal.	
5.	Stuart Delivery Limited v Augustine	<p>Worker status: can a delivery courier be a worker if they have a right to release their shifts into a pool of approved workers who may, or may not, take on those shifts?</p> <p>The EAT held that a right to release shift into approved pool is not a right of substitution, meaning that delivery couriers who have this right may still have the status of a worker. The respondent has appealed to the Court of Appeal.</p>	To be heard in the Court of Appeal on 12-13 October 2021
6.	Mackereth v The Department for Work and Pensions	<p>Religion and belief: was a doctor discriminated against when he was suspended and then dismissed for refusing to address transgender patients by their chosen pronoun?</p> <p>An Employment Tribunal found that a doctor engaged to carry out health assessments for the Department for Work and Pensions was <u>not</u> discriminated against on the grounds of religion or belief for refusing to address transgender patients by their chosen pronoun.</p> <p>The Tribunal accepted that the doctor's Christianity was protected under the Equality Act 2010. However, after considering the test established in <i>Grainger plc and others v Nicholson [2010]</i>, it held that the doctor's particular beliefs that God only created males and females and that a person cannot choose their gender, his lack of belief in transgenderism, and his conscientious objection to transgenderism, were views incompatible with human dignity which conflicted with the fundamental rights of others and so were not protected religious or philosophical beliefs under the Equality Act 2010. The doctor has appealed to the EAT to be heard on 18-19 October 2021.</p>	To be heard in EAT on 18-19 October 2021.
7.	The Harpur Trust v Brazel	<p>Working time: how should holiday pay be calculated for part-year workers?</p> <p>The Court of Appeal held that ET was wrong to find that "part-year workers" i.e. those working only part of the year (in this case a visiting music teacher who only worked during term-time) should have their annual leave right capped at 12.07% of annualised hours as advised in the Acas Guidance.</p> <p>Permission to appeal was granted on 19 June 2020. The appeal will be heard in the Supreme Court on 9 November 2021.</p>	Supreme Court hearing listed for 9 November 2021.
8.	Chell v Tarmac Cement and Lime	<p>Vicarious liability: whether an employer was liable for the consequences of an employee's practical joke in the workplace</p>	To be heard by the Court of Appeal by on

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		<p>The High Court held that in the circumstances the employer was not vicariously or directly liable for an employee engaging in a practical joke as it was outside the scope of the ordinary course of his employment and that it would not be fair and proper to hold the employer liable for such an act. The Claimant has appealed to the Court of Appeal and permission to appeal has been granted on the papers.</p>	<p>24 or 25 November 2021</p>
9.	Smith v Pimlico Plumbers Ltd	<p>Holiday Pay: can holiday be carried over indefinitely when the worker has taken unpaid annual leave.</p> <p>The EAT upheld the ET's decision that there is no right to carry over annual leave where annual leave was taken but was unpaid and therefore there was no right to payment for that annual leave on termination. The case centred on the application of the ECJ decision in <i>King v Sash Windows</i> which allowed leave to be carried over indefinitely where a worker is deterred from taking leave because it will be unpaid leave. In this case the question was whether <i>Sash Windows</i> applies to situations where a worker had taken annual leave but it was unpaid. The EAT held that the ECJ's decision only applies in respect of leave that has not been taken, therefore Mr Smith's claim for holiday pay brought after the termination of his contract was out of time since it was not brought within three months of the date when it should have been paid. Mr Smith has appealed to the Court of Appeal and the case is due to be heard on 7 or 8 December 2021.</p>	<p>Due to be heard by the Court of Appeal on 7 or 8 December 2021.</p>
10.	Angard Staffing Solutions v Kocur	<p>Agency workers: when is a worker who is 'temporarily' supplied to work for a hirer entitled to protection as an agency worker under the Agency Workers Regulations 2010?</p> <p>The Employment Tribunal held that a series of continuous temporary placements may attract the protection of the Agency Workers Regulations 2010 and the EAT dismissed the respondent's appeal. The respondent has now appealed to the Court of Appeal.</p>	<p>Due to be heard by Court of Appeal on 19 or 20 January 2022.</p>
11.	Mercer v Alternative Future Group Ltd	<p>Trade Unions: protection from detriment for participating in industrial action should be read into TULRCA</p> <p>The EAT held that a lack of protection from detriment for having participated in strike action under s.146 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) was a breach of Article 11 of the European Convention on Human Rights and that such protection should therefore be read into s.146 TULRCA. Permission to appeal to the Court of Appeal was sought on 12 July 2021. The case has been listed for a hearing on 20 January 2022.</p>	<p>To be heard in the Court of Appeal on 20 January 2022.</p>

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12.	Nursing and Midwifery Council v Somerville	<p>Worker status: no minimum obligation required</p> <p>The EAT held that the obligation to accept and perform some minimum amount of work is not a prerequisite for worker status. Mr Somerville had a series of individual contracts each time he sat on a panel for the Nursing and Midwifery Council (NMC) and an overarching agreement for the provision of his services. Although there was not sufficient mutuality of obligation or control for employee status he was deemed to be engaged as a worker. The EAT held that while an irreducible minimum of obligation was not essential for worker status it could be relevant to instances where it was disputed that there was a contract at all but that was not the case here. The NMC has appealed to the Court of Appeal which is due to be heard on 23 May 2022.</p>	To be heard in the Court of Appeal on 23 May 2022.
13.	Higgs v Farmor's School	<p>Religion and belief: what amounts to a protected belief?</p> <p>The Employment Tribunal held that a Christian employee's beliefs that gender cannot be fluid and that an individual cannot change their biological sex or gender were worthy of respect in a democratic society and could therefore be protected beliefs. The respondent has appealed to the EAT.</p>	Awaiting EAT hearing date

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