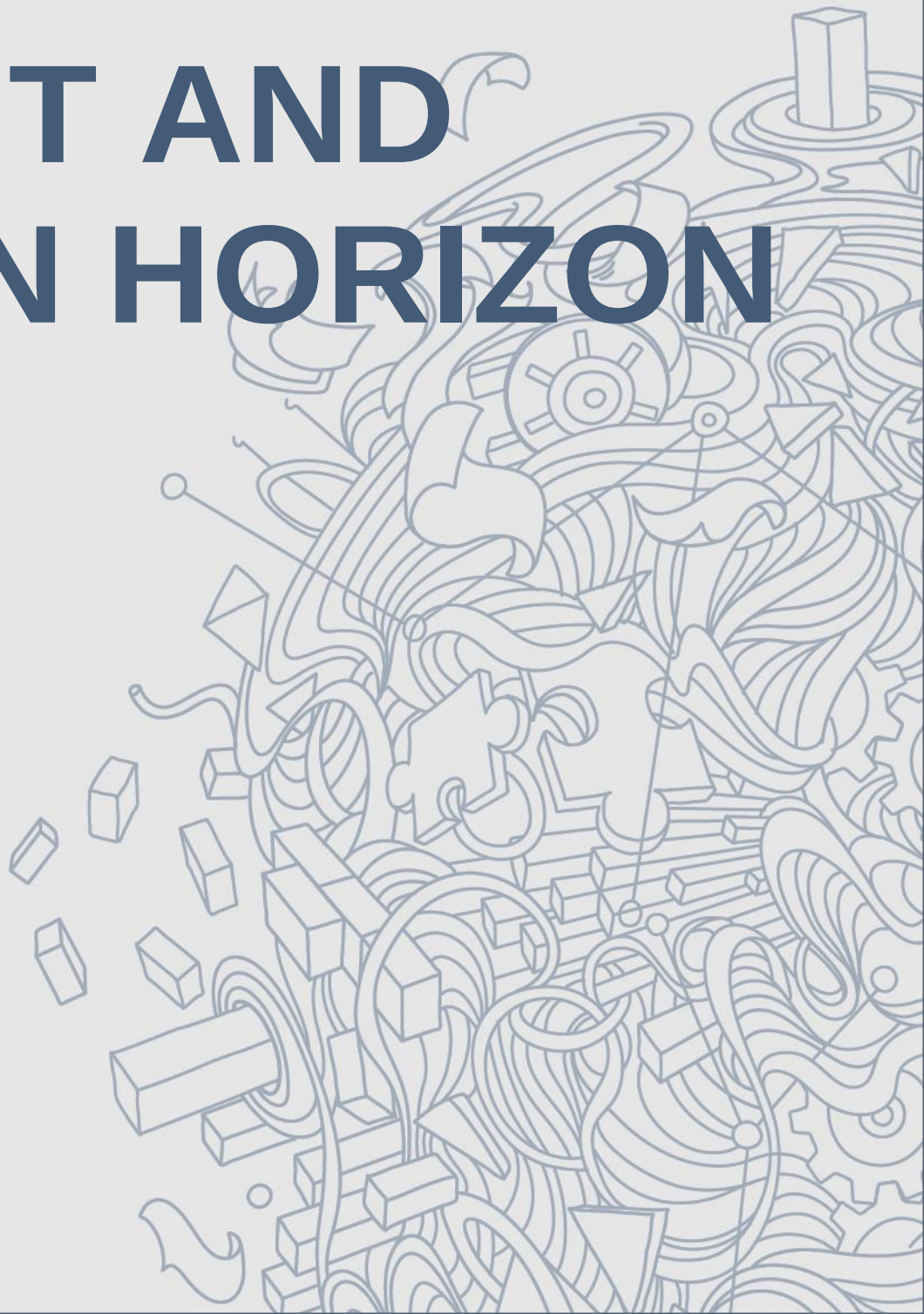
EMPLOYMENT AND IMMIGRATION HORIZON SCANNER

March 2024



ADDLESHAW GODDARD

FUTURE KEY LEGISLATION DEVELOPMENTS

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
1	Paternity Leave (Amendment) Regulations 2024	**Paternity Leave reforms** In June 2023 the Government published its response to a 2019 consultation on proposals for reforming parental leave and pay, which was issued as part of the Good Work Plan: proposals for families. The response sets out changes to paternity leave to be implemented: • eligible fathers and partners will be able to take paid paternity leave in two separate blocks of one week each if they wish rather than having to take all their leave in one go; • eligible fathers and partners will be able to take statutory paternity leave at any time within the first 52 weeks of birth (or placement for adoption) rather than in the first 8 weeks of birth (or placement for adoption); • fathers and partners will need to give their notice of entitlement to paternity leave and pay 15 weeks before the birth, but for notice of the paternity leave start date they will only need to give 28 days' notice before the date that they intend to take each period of leave (and pay, where they qualify). The Paternity Leave (Amendment) Regulations 2024 to implement these changes to paternity leave will be introduced in relation to children whose expected week of childbirth/date of placement for adoption (or expected date of entry into Great Britain for adoption) is on after **6 April 2024**. They came into force on 8 March 2024.	Regulations came into force on 8 March 2024 and will apply in relation to children whose expected week of childbirth/date of placement for adoption (or expected date of entry into Great Britain for adoption) is on after **6 April 2024**.
2	The Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023	**Reforms to Working Time, holiday pay and entitlement and TUPE** Under the Employment Rights (Amendment, Revocation and Transitional Provision) Act 2023 reforms to holiday pay and entitlement in Great Britain came into force on 1 January 2024 (see our article here). For holiday leave years beginning on or after **1 April 2024** there is a new accrual method for irregular hours workers and part year workers in the first year of employment and beyond. Holiday entitlement will be calculated as 12.07% of actual hours worked in a pay period. New Government guidance on holiday pay and entitlement reforms from 1 January 2024 has recently been published which, while not providing definitive answers to all queries, does set out some practical assistance for employers including worked examples. Also under the same Act, reforms to TUPE came into force on 1 January 2024 allowing small businesses (with fewer than 50 employees) proposing a transfer of any size *and* businesses of any size proposing to transfer fewer than 10 employees to consult directly with their employees if there are no existing worker representatives in place for TUPE transfers which take place on or after **1 July 2024**.	For holiday leave years beginning on or after 1 April 2024. For TUPE transfers taking place on or after 1 July 2024.

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3	Regulations will be required	**Increase in National Living Wage (NLW) and National Minimum Wage (NMW)** From 1 April 2024 the NLW will apply to all workers **aged 21 and over** and will rise from £10.42 to **£11.44** per hour. NMW rates will also rise: • from £7.49 to **£8.60** for those aged 18-20, • from £5.28 to **£6.40** for those aged 16-17; and • from £5.28 to **£6.40** for Apprentices. The almost 10% increase in the NLW up to £11.44/hour will apply to 21 year olds for the first time and will mean that the minimum salary of a worker working 40 hours per week will be near £24,000. Employers will face higher wages bills, most likely including the knock-on effect of higher wages for more senior employees to maintain an appropriate pay differential. The increase will also bring more workers closer to the NLW / NMW limits. Employers will need to be alive to the common risk areas that create NLW / NMW underpayment, especially within the context of different job roles or sections of the workforce that were not perhaps previously in scope of the NLW / NMW legislation.	1 April 2024
4	The draft Social Security Benefits Up-rating Order 2024 (sick pay) and the draft Social Security Benefits Up-rating Order 2024 (maternity, paternity and adoption pay)	**Increases to statutory sick pay, maternity, paternity and adoption pay** The following rates will apply from April 2024: **6 April 2024** • The weekly rate of statutory sick pay (SSP) will be **£116.75** (up from £109.40) **7 April 2024** • The weekly rate of statutory maternity pay (SMP) will be **£184.03** (up from £172.48) • The weekly rate of statutory paternity pay (SPP) will be **£184.03** (up from £172.48) • The weekly rate of statutory shared parental pay (ShPP) will be **£184.03** (up from £172.48) • The weekly rate of statutory adoption pay (SAP) will be **£184.03** (up from £172.48) **8 April 2024** • The weekly rate of maternity allowance will be **£184.03** (up from £172.48)	6, 7 and 8 April 2024

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5	Strikes (Minimum Service Levels) Act 2023	**Strikes (Minimum Service Levels) Act 2023: to provide minimum service levels for key sectors** The new **Strikes (Minimum Service Levels) Act 2023** enables minimum service levels to be implemented through regulations in six key sectors: health, education, fire and rescue and transport services as well as border security and decommissioning nuclear installations and management of radioactive waste and spent fuel. Where a minimum service level is in place and a trade union gives an employer notice of strike action, the employer can issue a work notice identifying the persons required to work and the work they must carry out to meet the minimum service level for the strike period. Once a work notice has been given to the trade union, the union must take "reasonable steps" to ensure all its members identified in the work notice comply with it. A union could face damages claims or an injunction to prevent the strike taking place if it fails to take reasonable steps. Individuals identified in a work notice who fail to comply and take part in strike action, could face disciplinary action including dismissal. The Act provides for minimum service levels to be set by the Government following consultation and regulations to set minimum service levels during strike action affecting border security and passport services, passenger rail, ambulance services and non-emergency patient transport services came into force in December 2023. Draft regulations for fire and rescue services were published in February 2024 and have met resistance from the Fire Brigades Union. Consultations have closed in the education and urgent, emergency and time-critical hospital-based health services and government's response is awaited. There are no plans to consult on implementing MSLs for the nuclear decommissioning sector where a voluntary agreement is already in place. The Government has issued the Code of Practice on the "reasonable steps" trade unions will be required to take to encourage compliance with work notices issued under the Strikes (Minimum Service Levels) Act 2023. The Code took effect on 8 December 2023 and sets out the four steps a trade union should take to satisfy the reasonable steps requirement including identifying the members who are subject to a work notice, encouraging those members to comply with the work notice, instructing picket supervisors to take reasonable endeavours to ensure union members identified in the work notice are not encouraged by those on the picket to take strike action. In order to maintain its protection from certain liabilities in tort, the union should ensure that it does not undermine any of the reasonable steps and corrects any actions by union members and officials which may do so. A revised statutory Code of Practice on Picketing which signposts the provisions on the statutory Code of Practice on the reasonable steps to be taken by a trade union (minimum service levels) came into force on 11 March 2024.	Draft regulations for fire and rescue services published in February 2024 will come into force the day after they receive Parliamentary approval. Consultation on implementing MSLs for urgent and emergency hospital services closed on 14 November 2023 and the consultation on MSLs in the education sector closed 30 January 2024. Government response is awaited.

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		The Government has also published non-statutory **guidance for employers, trade unions and workers on issuing work notices.** The guidance sets out the steps and considerations for preparing and issuing a work notice as well as guidance on consulting with unions and notifying workers. Labour remains opposed to the Act and say they will repeal it if it gets into power and Scottish ministers have announced they will refuse to co-operate with the new regulations.	
6	The Employment Relations (Flexible Working) Act 2023	**Changes to the Right to Request Flexible Working Legislation** On 5 December 2022, the Government announced its intention to introduce changes to the right to request flexible working legislation in response to the consultation which closed in December 2021. The Employment Relations (Flexible Working) Act 2023 received Royal Assent on 20 July 2023. From 6 April 2024, the right to request flexible working will be a day one right following the removal of the current 26 weeks' qualifying period. Other changes which come into force on 6 April 2024 will include: • Allowing two statutory requests in any 12-month period (rather than the current one). • Introducing a new requirement that employers cannot refuse an application unless they have first consulted the employee about the application. • Requiring employers to respond to a request within 2 months (rather than the current three). • Removing the existing requirement that the employee must explain what effect, if any, the change applied for would have on the employer and how that effect might be dealt with. The reforms will be supported by an updated ACAS statutory Code of Practice which was published on 11 January 2024 and has been presented to Parliament for approval (see draft Code of Practice here). ACAS will also produce non-statutory guidance to accompany the Code.	Legislation will come into force on 6 April 2024. The ACAS statutory Code of Practice is expected to come into force on 6 April 2024.
7	Carer's Leave Act 2023	**Carer's Leave** The Carer's Leave Act 2023, one of the Private Members' Bills which had Government backing, received Royal Assent on 24 May 2023 and came into force on 4 December 2023. Further regulations to bring the entitlement into force were made on 28 February 2024 and will come into force on 6 April 2024. The Act will introduce a new statutory right of one week's unpaid leave for unpaid carers per year. It will be a day one right with employees able to take leave to provide or arrange for care of an immediate family member, someone in their household or who reasonably relies on them for care with a defined long-term care need. The leave may be taken in individual	Regulations will come into force on 6 April 2024

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		days or half days, up to a block of one week. The notice period required is either twice as many days as the period of leave required, or three days, whichever is greater. Notice does not need to be in writing and can be waived where the other requirements of the regulations have been met. The carer will be protected from suffering any detriment arising from it and any dismissal related to exercising the right to carer's leave will be automatically unfair. The draft Carer's Leave Regulations 2024 have been laid before Parliament and will come into force on 6 April 2024.	
8	Protection from Redundancy (Pregnancy and Family Leave) Act 2023	**Protection from Redundancy (Pregnancy and Family Leave) Act 2023** The Protection from Redundancy (Pregnancy and Family Leave) Act 2023, one of the Private Members' Bills which had Government backing, received Royal Assent on 24 May 2023. The Act provides that expectant mothers will receive greater protection from redundancy during pregnancy and new parents will have extended protections when they return from maternity, adoption and shared parental leave. The Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024 will come into force on 6 April 2024 and provide protection against redundancy: • during pregnancy from the date when the employee tells their employer about their pregnancy and ends on the day maternity leave starts (or two weeks after the end of pregnancy where no statutory maternity leave entitlement), and • during/ after maternity leave or adoption leave the additional protected period will end 18 months after the expected week of childbirth/ child's birth date/child's placement or date they enter Great Britain. • for those taking six or more consecutive weeks of shared parental leave but who have not taken maternity or adoption leave, the additional protected period ends 18 months after the date of the child's birth or placement (or date they enter Great Britain). • The period of protection after returning to work from relevant leave will be known as the "additional protected period". The new rules will apply where the employee notifies their employer of their pregnancy on or after 6 April 2024. Where it relates to a period after relevant leave, the new rules will apply to maternity and adoption leave ending on or after 6 April 2024 and to a period of six consecutive weeks' shared parental leave (where the individual has not taken maternity or adoption leave) starting on or after 6 April 2024.	Regulations will come into force on 6 April 2024.
9	Statutory Code of Practice on	**Statutory Code of Practice on Dismissal and Re-engagement** On 29 March 2022, the Government announced that a new Statutory Code of Practice will be published	The statutory Code is expected to be in effect by the Summer 2024.

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	Dismissal and Re-engagement	on the use of dismissal and re-engagement practices, sometimes called "fire and rehire", to bring about changes to employees' terms and conditions (one of nine measures to protect seafarers' rights in the light of mass redundancies by P&O Ferries which took place without prior notice or consultation). On 24 January 2023, the Government published the draft Code of Practice on Dismissal and Re-engagement (the Code) and launched a consultation seeking views on it. The government has now published an **updated Code of Practice on Dismissal and Re-engagement** in response to last year's consultation which it expects to come into force in summer 2024. The Code is intended as a practical guidance for employers that clarifies the steps employers should take when seeking to change contractual terms and conditions of employment where there is a prospect of dismissal and re-engagement. The updated Code will still apply regardless of the number of employees affected and while it will not apply in a genuine redundancy situation, it has been amended to clarify that it will apply in situations where an employer envisages both redundancy and dismissal and re-engagement in respect of the same employees and will continue to apply for as long as dismissal and re-engagement is an option. The purpose of the Code is to ensure that an employer takes all reasonable steps to explore alternatives to dismissal and engages in meaningful consultation with trade unions, other employee representatives or individual employees in good faith, with an open mind, and does not use threats of dismissal to put undue pressure on employees to accept new terms, instead of seeking to find an agreed solution. The Code sets out the process an employer should follow including: • Communicating the wish to change terms and conditions. • Sharing information on the proposals as early as possible. • Engaging in meaningful consultation conducted in good faith with the intention of seeking an agreed resolution. The timing of the consultation process will depend on the circumstances. • The updated Code has also taken account of responses to the consultation and removed the requirement for an employer to re-examine the business strategy if the employees show they are unwilling to accept the contractual changes. Instead, the employer will be required to re-examine its plans after sharing the information sharing and consultation stages. • Putting agreed changes in writing.	

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		• Where it has not been possible to reach agreement, following the guidance set out in the Code for the unilateral imposition of new terms where, as a last resort, an employer decides to dismiss and re-engage on new terms. While the Code imposes no legal obligations on the parties, under section 203(3) of the *Trade Unions and Labour Relations (Consolidation) Act 1992* (TULRCA), tribunals and courts will be required to take the code into account when considering relevant cases. Under section 207A, they will have the power to apply an uplift of up to 25% of an employee's compensation where the code applies and the employer has unreasonably failed to follow it or a decrease of up to 25% where the employee has unreasonably failed to comply.	
1	Employment (Allocation of Tips) Act 2023	**The Employment (Allocation of Tips) Act 2023** The Employment (Allocation of Tips) Act 2023 is expected will be fully brought into force on 1 July 2024. It provides a requirement that employers pass all tips to staff in full without deductions, save for those required by tax law. Employers will also be required to have a written policy on tips and to distribute them in a fair, transparent and consistent way and to keep records of how tips have been dealt with for three years from the date received. A consultation on the draft statutory Code of Practice on the fair and transparent distribution of qualifying tips was issued on 15 December 2023 and closed on 22 February 2024. Non-statutory guidance to accompany the Code will be published in due course.	Expected to be fully brought into force on 1 July 2024. Consultation on a statutory code of practice closed 22 February 2024.
1	Workers (Predictable Terms and Conditions) Act 2023	**Workers (Predictable Terms and Conditions) Act 2023** The Workers (Predictable Terms and Conditions) Bill received Royal Assent on 18 September 2023 becoming the Workers (Predictable Terms and Conditions) Act 2023. Predictable working patterns has been recognised as an issue for some time. One of the key recommendations of the Taylor Review 2017 was the introduction of measures to address the problem of "one-sided flexibility" where a worker has no guarantee of work but is expected to be available at very short notice when required. In 2019 the Government consulted on proposals from the Low Pay Commission which included a right to request a more predictable contract. The Act will amend the Employment Rights Act 1996 to give workers and agency workers the right to request a predictable work pattern where there is a lack of predictability as regards any part of their work pattern and the change relates to their work pattern and where the purpose in applying for the change is to get a more predictable work pattern. Fixed term contracts of 12 months or less are presumed to lack predictability. The Act allows for two applications to be made in a twelve-month period. Regulations will be required to introduce a minimum service requirement (expected to be 26 weeks) to access the right. Employers will be able to reject applications on statutory grounds and workers and agency workers will have the right not to suffer a detriment	The Bill received Royal Assent on 18 September 2023. The Act and secondary legislation are expected to come into force in September 2024. Consultation on draft ACAS Code of Practice on handling requests for a predictable working pattern closed on 17 January 2024.

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		short of dismissal for making an application. It would also be automatically unfair to dismiss an employee for making an application. On 25 October 2023, ACAS issued a consultation and published its draft statutory Code of Practice on handling requests for a predictable working pattern. The procedure for dealing with requests for a predictable working pattern is similar to the procedure for making a flexible working request and the draft Code is set out in two sections which deal separately with requests from workers to employers and requests from agency workers to agencies or hirers. The consultation closed on 17 January 2024.	
1	The Worker Protection (Amendment of Equality Act 2010) Act 2023	**Harassment: A new mandatory duty to prevent harassment in the workplace** **The Worker Protection (Amendment of Equality Act 2010) Act 2023** received Royal Assent on 26 October 2023 and will come into force in around October 2024. Under the Act, employers will be under a new duty to take reasonable steps to prevent sexual harassment of their employees in the course of their employment. Breach of this duty may be enforced by the Equality and Human Rights Commission (EHRC) under its existing enforcement powers and, where a claim for sexual harassment has been upheld by an employment tribunal, the tribunal may order an uplift of up to 25% of any compensation awarded for sexual harassment if the tribunal considers that the duty to take reasonable steps to prevent sexual harassment has been breached. During its progress through Parliament, the House of Lords voted to amend the Bill to remove the clause which would have made employers liable for third party harassment and the Government accepted the amendment. This has meant that the position on third party harassment has not changed under the Equality Act 2010. It was also noted at the time that a Labour government could not promise that it would not revisit the issue in the future. The Act will come into force in around October 2024.	The Worker Protection (Amendment of Equality Act 2010) Act 2023 will come into force in around October 2024.
1	Neonatal Care (Leave and Pay) Act 2023	**Neonatal Care (Leave and Pay) Act 2023** The Neonatal Care (Leave and Pay) Act 2023, one of the Private Members' Bills which had Government backing, received Royal Assent on 24 May 2023. The Act requires regulations to be made to give parents the right to take neonatal care leave and receive neonatal care pay entitlement. Regulations are expected to give parents up to 12 weeks of paid leave, in addition to other leave entitlements such as maternity and paternity leave, so that they can spend more time with their baby who is receiving neonatal care (having been born prematurely or sick) in a hospital or other agreed care setting. It will be a day one right for employees and will apply to parents of babies admitted to hospital up to the age of 28 days and who have a continuous stay in hospital of seven full days or more.	Entitlements expected to be delivered in April 2025.

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		The Government has said the new entitlements are expected to be delivered on April 2025, with approximately seven statutory instruments to be laid "in due course".	
1	TBC	**Consultation on measures to ban or impose mandatory compensation for non-compete clauses** Driven by the need to be more competitive in the post-Covid-19 world, the Government consulted in February 2021 on measures to reform post-termination non-compete clauses in contracts of employment. Broadly, two measures to reform post-termination non-compete clauses in contracts of employment were proposed: (1) To **impose mandatory compensation for the post-employment period** that the employer wishes the employee to be restricted (similar to other jurisdictions such as France, Germany and Italy). Two complementary measures (transparency and a maximum period of non-compete), were also being considered alongside this option. (2) Alternatively, the other proposed measure was to **ban non-compete clauses** altogether (as is the case in California) The consultation closed on 26 February 2021. The Government has now published its response. It proposes to introduce legislation limiting the length of non-compete clauses in employment contracts to three months. The response sets out: • The proposed three-month limit will apply to non-compete clauses only, it will not apply to other types of restrictive covenants such as non-solicitation or non-dealing clauses. • The proposed limit will only apply to employment contracts and limb (b) workers' contracts. It will not extend to wider workplace contracts such as partnership agreements, LLP agreements and shareholder agreements. • The Government intends that common law principles will still apply to non-compete clauses of three months or less. The starting point for restrictive covenants is that they will be unenforceable unless they are reasonable and go no further than necessary to protect legitimate business interests. • There is no mention of how the statutory limit would apply retrospectively to existing contracts. The Government has said that it will introduce legislation "when Parliamentary time allows".	Legislation to be introduced "when Parliamentary time allows"

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1	Voluntary Ethnicity Pay Reporting: Guidance for Employers	**Ethnicity pay gap reporting: voluntary reporting guidance**
		
		In the Government's response to the Commission on Race and Ethnic Disparities (see the Inclusive Britain Report published on 17 March 2022), the Government confirmed that it will not be legislating for mandatory reporting "at this stage" as it wants "to avoid imposing new reporting burdens on businesses as they recover from the pandemic". However, the Government pledged to support employers with voluntary reporting by publishing new guidance in summer 2022. On 1 February 2023 the Government confirmed the guidance would be published "in due course".
		
		On 17 April 2023, the Government published the Guidance for employers on ethnicity pay reporting. The guidance gives advice on:
		
		• Collecting ethnicity pay data for employees;
		
		• How to consider data issues such as confidentiality, aggregating ethnic groups and the location of employees. It recognises that Ethnicity Pay Gap Reporting is much more complex than Gender Pay Gap Reporting and employers may have to make decisions about how best to combine different ethnic groups to ensure results are reliable and statistically sound and to protect confidentiality. Complexities also mean employers must carefully scrutinise and explore the underlying causes for any pay disparities.
		
		• The recommended calculations and step by step instructions on how to do them. It expresses the need for sensitivity and transparency, with employers encouraged to seek expert advice. Recommended measures include:
		  ○ percentage of each ethnic group in each hourly pay quarter;
		  ○ mean (average) ethnicity pay gap using hourly pay;
		  ○ median ethnicity pay gap using hourly pay;
		  ○ percentages of employees in different ethnic groups in your organisation;
		  ○ percentage of employees who did not disclose their ethnicity – they either answered 'prefer not to say' or gave no answer when you attempted to collect their ethnicity.
		
		• Further analysis that may be needed to understand the underlying causes of any disparities. It lists a number of questions to consider when seeking to understand the cause of the pay gap:
		
		  ○ Are some ethnic groups more likely to be recruited into lower paid roles in your organisation?
		  ○ Is there an imbalance in individuals from different ethnicities applying for and achieving promotions?
			Voluntary guidance published on 17 April 2023; consultation response published on 13 July 2023.

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		○ Do people from certain ethnic groups get 'stuck' at certain levels within your organisation? ○ Are some ethnic groups more likely to work in specific roles than other ethnic groups in your organisation, and is this reflected in pay? ○ Are some ethnic groups more likely to work in particular locations, and does this have an impact on pay? ○ Do employees from different ethnic groups leave your organisation at different rates? ○ Do particular aspects of pay (such as starting salaries and bonuses) differ by ethnicity? It also lists possible reasons why an ethnic group might be underrepresented in the organisation and how it may be helpful to compare workforce data against local ethnicity population data from the 2021 Census. • Reporting the findings. There is no requirement to do so, but employers may choose to do it to improve transparency. But employers should take care in explaining the results due to the complexity of the calculations avoiding one overarching measure, but rather present all the calculations and produce analysis for individual ethnic minority groups as well as the percentage of employees who have responded "prefer not to say". • Considering an employer action plan with the importance of taking an evidence-based approach towards actions. On 13 July 2023, the Government published its response to the 2018 consultation on mandatory ethnicity pay gap reporting and again confirmed that it would not be legislating to make ethnicity pay gap reporting mandatory "at this stage" because mandatory reporting may not always be the most appropriate mechanism for every type of employer, Instead it has produced the April 2023 guidance to support employers who wish to report voluntarily. The Labour Party has indicated in its New Deal for Working People Green Paper that it will make ethnicity pay gap reporting mandatory for businesses with more than 250 staff if it gets into power.	
1	Regulations will be required	**Confidentiality clauses and non-disclosure agreements** 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.	TBC

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		Final proposals in the Government response include: • 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. 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. The Higher Education (Freedom of Speech) Act 2023 (which received Royal Assent on 11 May 2023) will prevent English higher education providers e.g. universities, from entering into NDAs with staff, students or visiting speakers in relation to sexual abuse, sexual harassment, sexual misconduct and other types of harassment or bullying. During a Westminster Hall debate on 5 September 2023, Dame Maria Miller MP called for further legislation to curb improper use of NDAs in the workplace and claimed the Solicitors Regulatory Authority's NDA guidance does not go far enough. Legislation which was originally proposed by the government has not yet been brought forward.	
1	Bill of Rights 2022-2023	**New UK Bill of Rights (to replace the Human Rights Act 1998)** In December 2021, the Government published a consultation, *Human Rights Act Reform: A Modern Bill of Rights* to consult on reforming the existing Human Rights Act 1998 and replacing it with a Bill of Rights. The consultation closed on 8 March 202 and the Government responded on 12 July 2022 by introducing the Bill of Rights Bill into the House of Commons on 22 June 2022, with the aim of repealing the Human Rights Act 1998 and creating a new domestic human rights framework around the ECHR, to which the UK will remain a signatory. On 7 September 2022, it was reported that the Bill of Rights Bill 2022-23 had been dropped by the new Government headed by Liz Truss and would not progress to its second reading, which had been scheduled to take place on 12 September 2022. However, on 7 November 2022, it was reported that the Bill of Rights Bill 2022-23 will resume its passage through Parliament "within weeks". It was understood	The Bill was withdrawn on 27 June 2023.

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		to have been reinstated under the Government headed by the new Prime Minister, Rishi Sunak. On 8 May 2023 it was again reported that the Bill would be dropped. On 27 June 2023, it was confirmed that the Bill of Rights Bill would make no further progress.	
1	Future of Work Review	**Future of Work Review: to focus on key issues and challenges for the labour market for the future** On 12 May 2022 the Government announced that Matt Warman MP will lead the Future of Work review to be conducted over the spring and summer of 2022. The purpose of the review is to build on existing Government commitments (including as set out in the Taylor Review) and to create a detailed assessment on key issues facing the labour market. It will then provide a set of recommendations for Government to consider. The Future of Work Review will be in 2 parts: 1. The first phase - a high level assessment of key strategic issues on the future of work - is now complete (see Matt Warman MP's Response here). The Government will now look into 4 key areas: a) AI and automation: Considering what more can be done to (i) promote the UK to continue to be a world leader in AI and (ii) map and support areas more susceptible to the pace of change. b) Skills: Supporting initiatives to enable a more agile approach to the approval and delivery of training. c) Place and flexibility: Considering the rights of those who wish to work flexibly and develop a better understanding of what it means for different groups within the workforce. d) Workers' Rights: Encouraging transparency on what business now expect from their workers and when, and working to establish best practice and set clear expectations. 2. There is no indication yet of when phase 2, a more detailed assessment of selected areas of focus from the first phase, will be delivered.	Phase 1 completed on 31 August 2022. No timetable yet for Phase 2
1	TBC	**Menopause discrimination in the workplace** In July 2021 the House of Commons Women and Equalities Committee (**WEC**) launched an inquiry seeking views on the extent of discrimination faced by menopausal people in the workplace and how Government policy and workplace practices can better support those experiencing the menopause. On 28 July 2022, the WEC published a report, advocating that employers' lack of support for menopausal symptoms is pushing "highly skilled and experienced" women out of work, with impacts on the gender pay gap, the pension gap and female representation in senior leadership positions. The report asks the Government to:	

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		• amend the Equality Act 2010 (**EqA 2010**) to introduce menopause as a protected characteristic, and • include a duty for employers to provide reasonable adjustments for menopausal employees. However, these calls for legislative reform are unlikely to be taken forward after the Government confirmed in a letter to Caroline Nokes MP in May 2022 that it does not intend to amend the EqA 2010 to add the menopause as a protected characteristic and that it has no plans to implement the combined discrimination provision in section 14 of the EqA 2010, as this would introduce further complexity and costs for employers. Additionally: • On 3 February 2022, the Government launched a UK Menopause Taskforce to look at tackling issues surrounding the menopause. The taskforce will meet every 2 months for an initial period of 18 months, with future meetings scheduled by theme, including healthcare provisions, education and awareness, menopause in the workplace and research evidence and data; and • On 18 July 2022, the Government responded to recommendations from a commissioned independent report through the 50PLUS Roundtable on Menopause and the Workplace published in November 2021, confirming an intention to introduce change in relation to menopause support in key areas of Government policy, employer practice, and wider societal and financial change. • On 12 October 2022, the All-Party Parliamentary Group on Menopause published a report on the impacts of menopause and the case for policy reform. The report recommends that the government must: (1) Co-ordinate and support an employer-led campaign to raise awareness of menopause in the workplace and to help tackle the taboo surrounding menopause and work; and (2) Update and promote guidance for employers on "best practice" menopause at work policies and supporting interventions. This should be tailored to organisations of different sizes and resources to ensure it is as effective as possible and include the economic justification and productivity benefits of such interventions. • On 24 January 2023 the Government published its response to the WEC's *Menopause and the workplace* report rejecting many of the recommendations including the commencement of the combined discrimination provision on s14 Equality Act 2010 and the recommendation for a consultation on making menopause a protected characteristic. • On 28 February 2023, the Labour Party announced that if in government It will introduce a requirement for employers with over 250 employees to publish and implement a menopause plan setting out how they are supporting employees experiencing menopause symptoms together with government guidance for employers on how best to support their employees. • On 18 October 2023, the Government published a policy paper providing a summary of the work its Menopause Employment Champion has done and signposting guidance for employers. Also, an all-	

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		party Parliamentary group published a Manifesto for Menopause calling on all political parties to commit to seven reforms including a requirement for large employers to introduce a menopause action plan to support employees, providing guidance for SMEs and introducing tax incentives to encourage employers to integrate menopause into occupational health. • On 22 February 2024, the EHRC published guidance for employers on menopause in the workplace. The guidance summarises an employer's legal obligations under the Equality Act 2010 when supporting workers experiencing menopausal symptoms.	
2	National Disability Strategy	**National Disability Strategy: removing barriers faced by disabled people in all aspects of their lives including work and business** On 28 July 2021 the Government published a National Disability Strategy setting out various steps that it will take to remove barriers faced by disabled people in all aspects of their lives including work, justice, politics, transport, housing and leisure services. It also committed to consult on voluntary and mandatory reporting of disability in the workforce by large employers. The consultation ran until 25 March 2022 seeking views on how employers with more than 250 employees might be encouraged to collect and report statistics about disability to make their workforces more inclusive and exploring how Government and employers can make workplaces more inclusive for disabled people and increase transparency. In January 2022, the High Court ruled that the strategy is unlawful, based on a case brought by four disabled people regarding the consultation process. On 11 July 2023, the Court of Appeal overturned the High Court declaration and agreed that the UK Disability Survey was an insight and information gathering exercise that did not amount to voluntary consultation. On 18 September 2023, the Government provided an update of its work to date towards implementation. On 6 December 2023, the Women and Equalities Committee published its report into the National Disability Strategy criticising the Strategy and calling on ministers to work with disabled people to develop the strategy into a ten-year plan with clear targets. On 26 February 2024, the Government announced an inquiry looking into how disabled people can be better supported to start work and to stay in work and to examine progress made in narrowing the disability employment gap, currently at 28.9% which has not changed from the previous year. The call for evidence closes on 28 March 2024. On 6 March 2024, the Government published its response to the Women and Equalities Committee first report on the National Disability Strategy (see above). It reconfirmed its commitment to the policies set out in the Strategy and to the immediate actions it will take in 2024 set out in the Disability Action Plan to	Ongoing; Call for evidence closes on 28 March 2024.

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
		improve disabled people's lives until the end of this Parliament, but did not commit to a ten-year plan as called for in the WEC report.	

FUTURE KEY CASES

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
1.	HMRC v Professional Game Match Officials Ltd	**Employment status: Are match referees employees?** The First Tier Tribunal (**FTT**) allowed the taxpayer's appeal and found that referees were not employees. HMRC appealed to the Upper Tribunal. The Upper Tribunal dismissed HMRC's appeal and found that there was insufficient mutuality of obligation in the arrangements, and therefore no error of law in the FTT's conclusion. HMRC appealed to the Court of Appeal (**CA**). The CA agreed with the Upper Tribunal's decision that there was no overarching contract of employment with the referees but considered that on each assignment (i.e. a match day) there could be a contract of employment. The CA found the ability of either side to cancel an engagement before the match did not negate the necessary mutuality of obligation, holding that the fact that a contract permits either side to terminate the contract before it is performed is immaterial. The taxpayers appealed to the Supreme Court and the case was heard on 26-27 June 2023.	Heard in the Supreme Court on 26-27 June 2023. Judgment is awaited.
2.	George v Cannell and another	**Employee duties and restrictions on competition: What does a claimant need to demonstrate to rely on s3(1) of the Defamation Act 1952 in a claim for malicious falsehood?"** Whether a claimant needs to establish actual financial loss as a result of a false allegation of contractual breach of a post-termination restriction made by an employer to a third party or whether the fact that financial loss would probably follow is sufficient for the purposes of a defamation claim. G, worked as a recruitment consultant for LCA Jobs agency (owned by C). After G moved to a different agency, C spoke to one of G's clients and sent an email to her new employer alleging that G was acting in breach of restrictions in her contract. G sued C and LCA Jobs agency for libel,	Supreme Court granted permission to appeal on 21 December 2022. Heard on 17 and 18 October 2023. Awaiting reserved judgment.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		slander and malicious falsehood. The Supreme Court appeal is concerned with G's claim for malicious falsehood.	
3.	British Bung Manufacturing Company v Finn	**Sex discrimination: Can calling a man 'bald' at work amount to sex-related harassment?** The EAT considered whether an employment tribunal erred in holding that the claimant had suffered sex related harassment after being called 'bald' by a colleague during a heated argument. The tribunal had held that as baldness was much more prevalent in men than women then it was inherently related to sex. The case was heard at the EAT on 28 November 2023 and judgment is awaited.	EAT hearing on 28 November 2023. Awaiting reserved judgment.
4.	Omooba v Michael Garrett Associates Ltd (t/a Global Artists and Leicester Theatre Trust)	**Religion/Belief discrimination: Was it discriminatory for a theatre to dismiss an actor playing a lesbian character in response to bad publicity on social media relating to the actor's religious beliefs?** An actor hired to play Celie in a production of The Color Purple was dismissed after comments she'd made on Facebook years earlier surfaced, in which she said "I do not believe you can be born gay, and I do not believe homosexuality is right.". A tweet accusing the actor of hypocrisy for playing Celie (a lesbian character) gained traction and the theatre faced criticism for her casting. The chief executive asked whether her views had changed since writing the Facebook post and she responded that they had not. Faced with mounting public pressure and other members of the play's cast and production expressing concerns about working with her, the theatre terminated her employment and her agency also terminated their contract with her days later. She brought a claim against the theatre for direct and indirect discrimination based on religion or belief, but the ET dismissed her claims and made a costs award against her. The EAT considered whether the ET had erred in dismissing the actor's claims for direct and indirect religion or belief discrimination and harassment against a theatre and her agent and in making a costs order against her. The EAT upheld the ET's decision. It held that while the actor's belief formed a part of the context for her dismissal, her belief was not the reason why she was dismissed. Permission to appeal to the Court of Appeal has been sought.	Permission to appeal to the Court of Appeal has been sought.
5.	Mercer v Alternative Future Group Ltd	**Trade Unions: whether protection from detriment for participating in industrial action should be read into TULRCA.** The EAT held that a lack of protection from detriment for having participated in strike action under s.146 of the Trade Union and Labour Relations (Consolidation) Act 1992 (**TULRCA)** was a breach	Supreme Court granted permission to appeal in November 2022. The case was heard on 12 and 13 December

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		of Article 11 of the European Convention on Human Rights and that such protection should therefore be read into s.146 TULRCA. The Court of Appeal held that failure to give employees legislative protection against any sanction short of dismissal for taking official industrial action might put the UK in breach of Article 11 of the European Convention on Human Rights, even in the case of a private sector employer, if the sanction was one which struck at the core of trade union activity. However, an attempt to address this by reading down section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 would result in impermissible judicial legislation and was therefore a matter that should be left to Parliament. The case was heard by the Supreme Court on 12 and 13 December 2023.	2023. Judgment is awaited.
6.	Ryanair DAC v Morais	**Trade Unions: are striking employees protected from detriment under TULRCA and the Blacklisting Regulations?** The EAT held that section 146 of TULRCA, which protects workers from detriment connected with trade union activities, confers protection on workers who take union industrial action, regardless of whether such action is protected industrial action. The EAT also held that striking workers are protected from detriment under the Employment Relations Act 1999 (Blacklists) Regulations 2010. In reaching its decision, the EAT built on and applied the reasoning in *Mercer v Alternative Futures Ltd* (see above) which is also subject to appeal. The case was stood out by the Court of Appeal on 11 April 2022 and will be stayed until the Supreme Court has given a decision on the permission to appeal sought in the case of *Mercer v Alternative Future Group Ltd.*	Stood out by the Court of Appeal on 11 April 2022. Stayed until the Supreme Court has given a decision on the permission to appeal sought in the case of *Mercer v Alternative Future Group Ltd.*
7.	Accattatis v Fortuna Group (London) Ltd	**Covid-19: Did Covid-19 concerns justify a refusal to attend work?** The tribunal held that Covid-19 concerns alone may not justify a refusal to attend work under s.100(1)(e) of the Employment Rights Act 1996 if the employers have reasonably tried to accommodate the employees' concerns and reduce transmission risk. The case was heard by the EAT on 20 December 2023. It held that the tribunal had failed to identify the principal reason for dismissal and to consider section 100(2) in its judgment. The case was remitted.	Heard by the EAT on 20 December 2023 and has been remitted.
8.	Sellers v British Council	**Unfair dismissal: Is the investigation sufficient?**	Permission to appeal to the EAT has been sought and the case is

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		An employment tribunal found that the dismissal was unfair where there was an inadequate investigation into an alleged sexual assault. The investigation flaws included a failure to identify the existence of contemporaneous documents, a failure to retrieve relevant documents and a failure to identify the relevant circumstances of the alleged assault among other flaws. Permission to appeal to the EAT has been sought and the case is listed for a preliminary hearing on 30 January 2024.	listed for a preliminary hearing on 30 January 2024.
9.	Randall v Trent College Ltd and others	**Discrimination: Belief discrimination following controversial sermon** A Tribunal rejected a school chaplain's claim for religion or belief discrimination follow a sermon he delivered in the school chapel. In the sermon the chaplain said that pupils did not have to accept the ideas and ideologies of LGBT activists where they conflict with Christian values and they should make up their own minds. The Tribunal held that the school had been justified in objecting to the way the chaplain manifested his beliefs as it was contrary to his safeguarding duties and the school's statutory duties to the pupils. Permission to appeal to the EAT has been granted, listed for a preliminary hearing on 20 February 2024. Awaiting outcome.	Permission to appeal to the EAT has been granted, listed for a preliminary hearing on 20 February 2024. Awaiting outcome.
10.	Royal Parks Ltd v Boohene	**Indirect Race discrimination: pool for comparison too narrowly drawn** The EAT held that the pool for comparison for establishing group disadvantage was drawn too narrowly. The Employment Tribunal should not have made comparison between direct employees of the Royal Parks Ltd and the claimants who worked on a toilet and cleaning contract as this improperly excluded from the comparison pool all other outsourced worker carrying out work for the Royal Parks Ltd. An appeal to the Court of Appeal is due to float on 20 or 21 February 2024.	Heard by the Court of Appeal on 20 February 2024. Judgment awaited.
11.	USDAW v Tesco Stores Ltd	**Employment Contracts: Implying contractual terms.** The Court of Appeal allowed Tesco's appeal from an EAT decision that there existed a mutual intention between the parties in the terms of the contract that the right to retained pay would be permanent for as long as each relevant employee was employed in the same substantive role. The EAT decision had prevented Tesco from terminating and re-engaging a group of warehouse operatives in order to remove the contractual entitlement to the enhanced pay. The Court of Appeal held that the EAT should have interpreted the express terms of the contract in accordance with their natural and ordinary meaning, namely that Tesco would have the right to give notice in the ordinary way, and that the entitlement to retained pay would only last as long as the specific contract. In addition, the Court of Appeal overturned the associated injunction issued as part of the decision. Due to be heard by the Supreme Court on 23 and 24 April 2024.	Due to be heard by the Supreme Court on 23 and 24 April 2024.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
12.	Bailey v (1) Stonewall Equality Ltd (2) Garden Court Service Company (3) representatives of Garden Court Chambers	**Religion and belief: did a barristers' chambers discriminate against a barrister due to her 'gender critical' philosophical beliefs and did the organisation Stonewall instruct, cause or induce that discrimination?** An employment tribunal held that Garden Court Chambers had discriminated against a barrister for holding 'gender critical' beliefs and for expressing misgivings about Stonewall's policy aims, but rejected the claimant's claim against Stonewall for instructing, causing or inducing that discrimination. The employment tribunal found that the communications from Stonewall relating to the claimant were just a protest and not sufficient to amount to an inducement, or attempted inducement, of any particular course of action by Garden Court. The claimant has appealed to the EAT as to whether the ET was correct to reject claims that Stonewall had instructed, caused or induced discrimination by Garden Court (or attempted to do so), under section 111 of EqA 2010. A £20,000 costs award was made against representatives of Garden Court Chambers for unreasonable conduct of their solicitor in preparing the trial bundle in the case. An appeal is due to be heard in the EAT on 14 May 2024.	An appeal is due to be heard in the EAT on 14 May 2024.
13.	HSBC EWC & HSBC Continental Europe (1)	**European Works Councils: compliance** The Central Arbitration Committee (CAC) found that the EWCs complaints that the terms of the HSBC EWC Agreement had not been complied with were not well founded. The EWC claimed that excluding the UK business from the scope of the Agreement and excluding UK representatives from the EWC was a breach of its articles. The CAC did not determine whether it had jurisdiction to hear the EWC's complaints, instead it concluded the complaints were not well founded. A hearing is scheduled to be heard by the EAT on 22 May 2024.	Hearing scheduled to be heard by the EAT on 22 May 2024.
14.	Charalambous v National Bank of Greece	**Unfair dismissal: decision maker in misconduct dismissal** The EAT held that an employee's misconduct dismissal was not unfair when the decision to dismiss was reached by a more senior manager than the one who chaired the disciplinary hearing which was in accordance with the employer's handbook and they consulted with the disciplinary chair before reaching their decision. Permission to appeal to the Court of Appeal was granted on 30 October 2023. Hearing vacated, awaiting new hearing date.	Permission to appeal to the Court of Appeal was granted on 30 October 2023. Hearing vacated, awaiting new hearing date.
15.	Higgs v Farmor's School	**Religion/Belief discrimination: proportionality assessment** The EAT has upheld an appeal finding that the tribunal failed to engage with the "reason why" question to determine whether the school's treatment of a teaching assistant who posted on Facebook using inflammatory language which could have led readers to believe that she held	An appeal is due to be heard by the Court of Appeal on 7 October 2024.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		homophobic and transphobic beliefs and who was dismissed for gross misconduct. In determining whether the school's treatment was because of, or related to, the manifestation of her beliefs or because she had manifested her beliefs in a justifiably objectionable way, the tribunal needed to carry out a proportionality assessment and be satisfied that the measures adopted by the employer were prescribed by law and recognised the essential nature of the employee's rights to freedom of belief and freedom of expression. The case was remitted to an employment tribunal for re-hearing on the issue. Application for permission to appeal lodged with the Court of Appeal on 10 July 2023. An appeal is due to be heard by the Court of Appeal on 7 October 2024.	
16.	Tyne and Wear Passenger Transport Executive t/a Nexus v National Union of Rail, Maritime and Transport Workers and another	**Trade Unions: Equitable remedy of rectification** The Court of Appeal held that the equitable remedy of rectification is not available to an employer for a legally unenforceable collective agreement. As the legal consequences of the relevant collective agreement were embodied in the individual employment contracts that incorporated it, the employers should have sought to rectify the employment contracts and brought the claim against the employees concerned not the trade unions, who were the wrong defendants. Permission to appeal to the Supreme Court was granted on 6 April 2023.	Permission to appeal to the Supreme Court was granted on 6 April 2023.
17.	Moustache v Chelsea and Westminster NHS Foundation Trust	**Tribunal Practice and Procedure: Failure to clarify claims** The EAT has held that a tribunal should have clarified the claims brought by a litigant in person at the outset of a full merits hearing and a failure to do so was an error of law. Although a list of issues had been prepared by the respondent and purportedly agreed by the claimant, it did not include a claim for discriminatory dismissal due to mental ill health (s.15 EqA). As it was not recorded in the list of issues, the tribunal failed to adjudicate on this claim. The EAT held that the claim form and witness statement contained sufficient information to alert the tribunal that the claimant, a litigant in person, was bringing a claim under s.15 about her dismissal. The unfair dismissal and discrimination claims were remitted to an employment tribunal. Permission to appeal to the Court of Appeal was granted on 17 January 2024 and is due to be heard on 7 October 2024.	Appeal to the Court of Appeal is due to be heard on 7 October 2024.
18.	Corby v ACAS	**Belief discrimination: opposition to critical race theory** An employment tribunal held that a claimant's opposition to critical race theory (as opposed to his anti-racist beliefs based on the ideas of Martin Luther King Jr) is a protected belief under the	An appeal has been lodged at the EAT and a hearing date is awaited.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		Equality Act 2010. The claimant's beliefs passed all five stages of the *Grainger* test and were therefore capable of protection under the EqA. An appeal has been lodged.	
19.	AECOM Ltd v Mallon	**Disability Discrimination: a genuine job application or seeking to engineer a claim** The EAT has upheld a tribunal's finding that an employer was under a duty to make reasonable adjustments for a job applicant where its requirement for applications to made online put him at a substantial disadvantage due to his dyspraxia. The question of whether he had genuinely applied for the job (having previously failed a probationary period) or whether he was seeking to engineer a disability discrimination claim was remitted to the tribunal to be reconsidered.	Awaiting a full hearing date.
20.	Dobson v Cumbria Partnership NHS Foundation Trust	**Indirect Sex Discrimination: Flexible working** Having been remitted, the employment tribunal has upheld its original decision that the claimant had not been indirectly discriminated against or unfairly dismissed. Dismissal for refusing to work weekends was a proportionate means of achieving a legitimate aim of providing 24/7 care in the community, balancing workload among the team and reducing costs of using more senior nurses at the weekend. An employer's needs as a whole must sometimes prevail and the principle of allowing flexible working cannot be applied too strictly. An appeal has been lodged.	An appeal has been lodged.
21.	De Bank Haycocks v ADP RPO UK Ltd	**Redundancy: Absence of Consultation** The EAT held that an employee's dismissal for redundancy was unfair where there was a clear absence of meaningful consultation at the formative stage of the redundancy process which would have provided opportunity to put forward alternatives to redundancy and to influence the employer's decision. An appeal process could not repair the gap of consultation at the formative stage. An appeal is due to be heard by the Court of Appeal on 18 March 2025.	An appeal is due to be heard by the Court of Appeal on 18 March 2025.
22.	(1) Ryanair DAC, (2) Storm Global/MCG Aviation v Lutz	**Employment status** The EAT has upheld the tribunal's decision that a pilot supplied to Ryanair by an aviation recruitment company on a five-year contract through a service company was an agency worker under the Agency Workers Regulations 2010 and not a self-employed contractor. Permission to appeal has been sought.	Permission to appeal has been sought.

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