

# EMPLOYMENT AND IMMIGRATION HORIZON SCANNER



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January 2022

## FUTURE KEY LEGISLATION DEVELOPMENTS

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
1.	Draft Data Protection Act 2018 (Amendment of Schedule 2 Exemptions) Regulations 2022	<p><b>Regulations amending the Data Protection Act 2018 immigration exemption laid before Parliament</b></p> <p>The government laid draft Data Protection Act 2018 (Amendment of Schedule 2 Exemptions) Regulations 2022 before Parliament on 10 December 2021. They amend the immigration exemption in Schedule 2 and will need to come into force before the end of January 2022.</p> <p>Amendments were required following the Court of Appeal's judgment in the case of <i>R (Open Rights Group and another) v Secretary of State for the Home Department and another [2021]</i> that the immigration exemption is incompatible with Article 23 of the General Data Protection Regulation (GDPR), and therefore unlawful. In a follow up to its judgment, the Court of Appeal ruled that this declaration will be suspended until 31 January 2022 which allows time for legislation to be amended.</p>	By 31 January 2022
2.	Regulations will be required	<p><b>Increase in National Living Wage (NLW) and National Minimum Wage (NMW)</b></p> <p>From 1 April 2022 the NLW for those over 23 will rise from £8.91 to <b>£9.50</b> per hour.</p> <p>NMW rates will also rise:</p> <ul style="list-style-type: none"> <li>• from £8.36 to <b>£9.18</b> for those aged 21-22,</li> <li>• from £6.56 to <b>£6.83</b> for those aged 18-20,</li> <li>• from £4.62 to <b>£4.81</b> for under 18s; and</li> <li>• from £4.30 to <b>£4.81</b> for Apprentices.</li> </ul> <p>The 6.6% increase in the NLW up to £9.50 / hour for those aged over 23 in April 2022 will increase earnings for over 2 million of the lowest-paid workers in the country. 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 than were perhaps previously in scope of the NLW / NMW legislation.</p>	1 April 2022
3.	Regulations will be required	<p><b>Making vaccination a condition of deployment in the health and wider social care sector</b></p> <p>In response to a public consultation on whether or not to make COVID-19 and flu vaccination a condition of deployment within health and wider social care settings, the government has confirmed that COVID-19 vaccination will become</p>	1 April 2022

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		<p>mandatory for those with face-to-face contact with patients and service users, unless they are exempt. Implementing regulations will come into force on 1 April 2022 after a twelve week grace period.</p> <p>Front line workers as well as non-clinical workers not directly involved in patient care but who have face-to-face contact with patients, including receptionists, ward clerks, porters and cleaners will be caught by the new regulations but the government has decided not to introduce vaccination requirements for flu at this time. The mandatory vaccination requirement for the health and social care sector will be implemented by amending the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 as was also done to implement mandatory vaccination of care home staff.</p>	
4.	The Personal Protective Equipment at Work (Amendment) Regulations 2022	<p><b>Duty on employers to provide suitable PPE to be extended to workers from 6 April 2022</b></p> <p>From 6 April 2022 the duty on employers to provide suitable personal protective equipment (PPE), where there is a health and safety risk, will be extended so that PPE will need to be provided to all workers not just employees. The prohibition on employers charging employees for PPE will also be extended to cover workers. "Worker" has the same definition as section 230(3) of the Employment Rights Act 1996 and the employer's duty will apply during periods that a worker is working under their worker's contract but not otherwise.</p> <p>The amended PPE Regulations follow the High Court's judgment in <u><i>R (Independent Workers' Union of Great Britain) v Secretary of State for Work and Pensions and another (2020)</i></u>, where it was held that, by excluding workers from protection, the UK had failed properly to implement Article 8(4) and (5) the EU Health and Safety Framework Directive and the Council Directive on the minimum health and safety requirements for the use by workers of PPE at the workplace.</p>	6 April 2022
5.	Health and Social Care Levy Act 2021	<p><b>Health and social care levy and changes to national insurance contributions</b></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"> <li>• <b>From April 2022</b>, 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).</li> <li>• <b>From April 2023</b>, 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.</li> </ul>	<p>Temporary NIC increase from <b>6 April 2022</b></p> <p>Health and Social Care Levy from <b>6 April 2023</b></p>

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		<p>Legislation for the temporary NIC increase and the new levy is contained in the Health and Social Care Levy Act 2021 which received Royal Assent on 20 October 2021.</p>	
6.	<p>Right to work checks: COVID-19 concession extended</p>	<p><b>Right to work checks: COVID-19 concession extended</b></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"> <li>• checks over video calls;</li> <li>• 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</li> <li>• 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.</li> </ul> <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> <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>	6 April 2022
7.		<p><b>Proposed increases to statutory maternity, paternity, adoption and sick pay</b></p> <p>The Department for Work and Pensions has published its proposed increases to a number of statutory benefit payments. The following rates are expected to apply from April 2022:</p> <ul style="list-style-type: none"> <li>• The weekly rate of statutory sick pay (SSP) will be <b>£99.35</b> (up from £96.35)</li> <li>• The weekly rate of statutory maternity pay (SMP) and maternity allowance will be <b>£156.66</b> (up from £151.97)</li> <li>• The weekly rate of statutory paternity pay (SPP) will be <b>£156.66</b> (up from £151.97)</li> <li>• The weekly rate of statutory shared parental pay (ShPP) will be <b>£156.66</b> (up from £151.97)</li> <li>• The weekly rate of statutory adoption pay (SAP) will be <b>£156.66</b> (up from £151.97)</li> </ul>	11 April 2022

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		The rates will be confirmed once an Order is made and are due to come into effect on 11 April 2022.	
8.	Legislation will be required	<p><b>Consultation on reforming the Human Rights Act 1998.</b></p> <p>The government has published a consultation, Human Rights Act Reform: A Modern Bill of Rights which proposes reforming the existing Human Rights Act 1998 and replacing it with a Bill of Rights following a report by the Independent Human Rights Act Review conducted by an independent panel chaired by Sir Peter Gross which was published in December 2021.</p> <p>Key proposals in the consultation include whether the right to a jury trial should be recognised in the Bill of Rights and consideration of whether a permission stage for human rights claims, requiring claimants to prove that they have suffered "significant disadvantage" before their claim can be heard should be introduced. An additional limb to this test would be included where the "significant disadvantage" threshold could not be met, allowing claims to proceed where they were of "overriding public importance". The consultation closes on 8 March 2022.</p>	The closing date for responses is 8 March 2022.
9.	National Disability Strategy	<p><b>National Disability Strategy: removing barriers faced by disabled people in all aspects of their lives including work and business</b></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. It also made a commitment to consult on voluntary and mandatory reporting of disability in the workforce by large employers. The consultation has now been published and seeks 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. It will also explore how government and employers can make workplaces more inclusive for disabled people and increase transparency. The closing date for responses is 25 March 2022.</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>Disability workforce reporting consultation closes 25 March 2022.</p> <p>Findings on apprenticeship barriers to be published in February 2022</p>
10.	Employment Bill 2021-22	<p><b>New Employment Bill</b></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>	The draft Employment Bill is expected to be published when parliamentary time allows

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		<ol style="list-style-type: none"> <li>1. Creating a new, single enforcement body to offer better protection for workers;</li> <li>2. Ensuring that workers receive the tips left for them in full;</li> <li>3. Introducing a new right for all workers to request a more predictable contract;</li> <li>4. Extending redundancy protections to prevent discrimination against women and new parents (see separate entry);</li> <li>5. Allowing parents to take extended leave for neonatal care;</li> <li>6. Introducing an entitlement to one week's leave for unpaid carers; and</li> <li>7. Subject to consultation, making flexible working the default unless employers have good reason not to.</li> </ol> <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 (<b>BEIS</b>) confirmed that, alongside the Secretary of State, he intends to bring in the long-awaited Employment Bill "when parliamentary time allows".</p>	<p>The consultation on flexible working closed on <b>1 December 2021</b> and the government's response is awaited</p>
11.	Legislation will be required	<p><b>Statutory right to a week's unpaid leave for unpaid carers</b></p> <p>In response to the public consultation on carer's leave, the government has confirmed it will introduce a new statutory right of up to one week's unpaid leave for unpaid carers per year.</p> <p>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 will be flexible, taken in half/whole day or one week blocks and while there will be notice requirements, an employer will not be able to deny a request but may be able to postpone it for undue disruption to the business. 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.</p>	TBC

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		There is no immediate date for the introduction of the new leave provisions other than it will be introduced "when parliamentary time allows".	
12.	Legislation will be required	<p><b>Staff tips to be retained in full</b></p> <p>In October 2021, the government published its response to the consultation on tipping, gratuities, cover and service charges confirming its intention to legislate to ensure that tips for workers are received by them in full.</p> <p>The measures include requirements for employers not to make deductions from staff tips save for tax, requirements for tips to be distributed fairly, transparently and within a set timeframe with employers needing to have a written policy on tips and to keep a record of how tips are dealt with. Workers will be able to request information on an employer's tipping record and there will be a statutory code of practice which is expected to replace the existing voluntary code. Rights will be enforceable in the employment tribunals.</p> <p>The measures are expected to be in the awaited new Employment Bill (see above) which will be introduced when parliamentary time allows.</p>	TBC
13.	Regulations will be required	<p><b>Confidentiality clauses and non-disclosure agreements</b></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 (<b>NDAs</b>). 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"> <li>• legislating so that limitations in NDAs are clearly set out in employment contracts and settlement agreements</li> <li>• creating guidance for solicitors and legal professionals responsible for drafting settlement agreements</li> <li>• legislating to enhance the independent legal advice received by individuals signing confidentiality clauses</li> <li>• enforcement measures for confidentiality clauses that do not comply with legal requirements in written statements of employment particulars and settlement agreements.</li> </ul>	TBC

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		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.	
14.	Regulations will be required	<p><b>Extending redundancy protection for women and new parents</b></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"> <li>• 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;</li> <li>• extend the redundancy protection period by/to six months once a new mother has returned to work;</li> <li>• extend redundancy protection into a period of return to work for those taking adoption and shared parental leave; and</li> <li>• 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).</li> </ul> <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>	TBC
15.	Regulations will be required	<p><b>Duty to prevent harassment in the workplace</b></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"> <li>• introducing a new mandatory duty on employers to protect workers from harassment and victimisation in the workplace;</li> </ul>	TBC



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		<ul style="list-style-type: none"> <li>strengthening and clarifying laws in relation to third party harassment;</li> <li>whether interns are adequately protected by the Equality Act 2010 (<b>the EqA</b>) and the possibility of extending protection under the EqA to volunteers; and</li> <li>extending employment tribunal time limits in the EqA from three months to six months.</li> </ul> <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>	
16.	Directive on work-life balance for parents and carers	<p><b>Work-life balance for parents and carers</b></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 <b>within three years</b> (31 July 2022)</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>
17.	New legislation will be required	<p><b>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</b></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>	TBC

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		<p>Broadly, two measures to reform post-termination non-compete clauses in contracts of employment were proposed:</p> <p>(1) To <b>impose mandatory compensation for the post-employment period</b> 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 <b>ban non-compete clauses</b> 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>	
18.	New legislation will be required	<p><b>Menopause discrimination in the workplace</b></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.	Mackereth v The Department for Work and Pensions	<p><b>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?</b></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 appealed to the EAT. A hearing is due to take place on 28 March 2022.</p>	Hearing in EAT on 18-19 October 2021 withdrawn. Relisted for 28 March 2022.
2.	The Harpur Trust v Brazel	<p><b>Working time: how should holiday pay be calculated for part-year workers?</b></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 was heard in the Supreme Court on 9 November 2021. Awaiting reserved judgment.</p>	Heard in the Supreme Court on 9 November 2021. Awaiting reserved judgment.
3.	Smith v Pimlico Plumbers Ltd	<p><b>Holiday Pay: can holiday be carried over indefinitely when the worker has taken unpaid annual leave.</b></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</p>	Heard by the Court of Appeal on 7 or 8 December 2021. Judgment awaited.

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		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 was heard on 7 or 8 December 2021 and we await judgment.	
4.	Kocur v Angard Staffing Solutions	<p><b>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?</b></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 and the case is due to be heard on 19 or 20 January 2022.</p>	Due to be heard by Court of Appeal on 19 or 20 January 2022.
5.	Mercer v Alternative Future Group Ltd	<p><b>Trade Unions: protection from detriment for participating in industrial action should be read into TULRCA</b></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 (<b>TULRCA</b>) 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 26 or 27 January 2022.</p>	To be heard in the Court of Appeal on 26 or 27 January 2022.
6.	Nursing and Midwifery Council v Somerville	<p><b>Worker status: no minimum obligation required</b></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 (<b>NMC</b>) 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 2 or 3 February 2022.</p>	To be heard in the Court of Appeal on 2 or 3 February 2022.

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7.	HMRC v Atholl House Productions	<p><b>IR35: Whether an employment relationship existed</b></p> <p>The FTT found there was no such relationship and IR35 did not apply to a presenter providing services to the BBC through a personal services company. HMRC appealed to the UT. The UT found that the FTT had erred in its approach to contractual interpretation. However, after re-making the decision by applying the test in Ready Mix Concrete to what it judged to be the correct formulation of the hypothetical contract, the UT came to the same conclusion as the FTT and dismissed HMRC's appeal. HMRC has appealed to the Court of Appeal and the hearing is due to be heard on 8 or 9 February 2022.</p>	To be heard in the Court of Appeal on 8 or 9 February 2022.
8.	Higgs v Farmor's School	<p><b>Religion and belief: what amounts to a protected belief?</b></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 with a hearing on 1 and 2 March 2022.</p>	To be heard in the EAT on 1 and 2 March 2022.
9.	Rodgers v Leeds Laser Cutting Ltd	<p><b>Unfair dismissal: Serious and imminent danger</b></p> <p>An employment tribunal found that the dismissal of an employee who told his manager he would not return to work until after lockdown because he feared he would infect his children with COVID-19, was not automatically unfair. Permission to appeal to the EAT has been granted and the case is due to be heard on 12 April 2022.</p>	Due to be heard in the EAT on 12 April 2022.
10.	Pelter v Buro Four Project Services Ltd	<p><b>PHI benefits: was it discriminatory to withdraw PHI before the age of 65 or state pension age?</b></p> <p>An employment tribunal dismissed Mr Pelter's claims for direct and indirect age discrimination following the cessation of payments under Buro's permanent health insurance (PHI) scheme when he reached 65. Mr Pelter's state pension age was 65 when he went on sick leave and payment under the PHI scheme started. In 2020, when Mr Pelter reached 65 payments ceased in accordance with the rules of the PHI scheme. However, in 2012, Mr Pelter's state pension age had been increased to 66. He argued that the failure to continue payments until this revised state pension age was discriminatory. He has appealed to the EAT and the case is due to be heard on 14 and 15 June 2022.</p>	Due to be heard by the EAT on 14 and 15 June 2022.

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11.	Tyne and Wear Passenger Transport Executive t/a Nexus v National Union of Rail, Maritime and Transport Workers and another	<p><b>Remedy of Rectification: an employer can claim rectification for a collective agreement.</b></p> <p>The High Court held that an employer can bring a claim for the equitable remedy of rectification in relation to a collective agreement, allowing an argument to proceed that the agreement was reached on the basis of a mistake. The case has been appealed to the Court of Appeal and is due to be heard by 19 July 2022.</p>	Due to be heard by the Court of Appeal by 19 July 2022.
12.	Amdocs Systems Group Ltd v Langton	<p><b>PHI benefits: is employer liable to pay income protection payments not covered by insurance.</b></p> <p>The EAT held that an employer was liable to pay the level of income protection payments set out in an offer letter and summary of benefits provided by an employee's original employer prior to a TUPE transfer, regardless of the fact that the "escalator" part of the payments was not covered by its insurance. An appeal to the Court of Appeal is due to be heard by 14 December 2022.</p>	Due to be heard by Court of Appeal by 14 December 2022.
13.	Manjang v Uber, Raja v Uber	<p><b>Discrimination: Uber workers to challenge facial recognition software as discriminatory.</b></p> <p>Two separate claims to employment tribunals will allege that Uber's decision to use a facial recognition system to verify the identity of their drivers indirectly discriminates on the ground of race. Each claimant is being supported by the Independent Workers Union of Great Britain (IWGB) and App Drivers or Couriers Union (ADCU). The cases are due to be heard by an employment tribunal with hearing dates awaited.</p>	Awaiting hearing date to be listed in the employment tribunals.
14.	Ryanair DAC v Morais	<p><b>Trade Unions: Striking employees protected from detriment under TULRCA and Blacklisting Regulations.</b></p> <p>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 <i>Mercer v Alternative Futures Ltd</i> (see above) which is also subject to appeal. An appeal to the Court of Appeal is awaiting a hearing date.</p>	Awaiting hearing date to be listed at the Court of Appeal.
15.	Steer v Stormsure Ltd	<p><b>Interim Relief: Absence of interim relief for discrimination cases not compatible with ECHR.</b></p>	Awaiting permission to appeal to the Supreme Court.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		<p>The Court of Appeal dismissed a claim that the lack of interim relief remedy for discrimination cases is incompatible with the right to a private life under Article 8 of the European Convention on Human Rights (ECHR) read with Article 14 of the ECHR (which prohibits discrimination). It is understood that permission to appeal to the Supreme Court has been sought.</p> <p>In certain types of automatically unfair dismissal cases, in particular whistleblowing claims and trade union membership claims, a tribunal can grant an employee interim relief by ordering the employer to continue employing the employee or if it is unwilling to employ them, to continue paying their salary until the case is finally determined. Interim relief is not available in discrimination claims involving a dismissal a position which is being challenged in this case.</p>	
16.	The Chancellor, Master and Scholars of the University of Oxford v Ewart; and Pitcher v The Chancellor Masters and Scholars of the University of Oxford and others	<p><b>Age Discrimination and Compulsory Retirement Age: challenge to EAT's ruling upholding opposing tribunal decisions on justification of the same compulsory retirement policy.</b></p> <p>The EAT upheld two opposing employment tribunal decisions on whether a directly discriminatory compulsory retirement age was objectively justified. The EAT confirmed that neither tribunal had erred in law but rather the different conclusions were justified due to the material differences in the evidence presented to each tribunal. Permission to appeal to the Court of Appeal has been sought.</p>	Awaiting permission to appeal to the Court of Appeal.
17.	Accattatis v Fortuna Group (London) Ltd	<p><b>Unfair dismissal: dismissal for concerns about commuting and attending the office during lockdown not automatically unfair.</b></p> <p>The tribunal held that COVID-19 concerns alone may not justify a refusal to attend work under section 100(1)(e) of the Employment Rights Act 1996 if employers have reasonably tried to accommodate employees' concerns and reduce transmission risk. Permission to appeal to the EAT has been sought.</p>	Awaiting permission to appeal to the EAT.
18.	Kong v Gulf International Bank (UK) Ltd	<p><b>Unfair dismissal: attributing motivation to the employer.</b></p> <p>The EAT has clarified that, by applying the scope of the principle in <i>Royal Mail Group Ltd v Jhuti [2019]</i>, when determining the reason for dismissal in an unfair dismissal claim, it will rarely be possible to attribute to the employer the motivation of any person other than the one who decided to dismiss. Permission to appeal to the Court of Appeal has been sought.</p>	Awaiting permission to appeal to the Court of Appeal.

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