

EMPLOYMENT AND IMMIGRATION HORIZON SCANNER



June 2022

FUTURE KEY LEGISLATION DEVELOPMENTS

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
1.	The National Insurance (Increase of Thresholds) Act 2022	<p>Increase in thresholds for National Insurance Contributions (NICs)</p> <p>From 6 July 2022, the annual National Insurance Primary Threshold and Lower Profits Limit will be increased from £9,880 to £12,570, which aligns with the income tax personal allowance. This is expected to benefit taxpayers, who will be able to keep more of their earned income (estimated to save the average employee over £330 in a year). The measure was announced in the Government's Spring Statement in March 2022 and is expected to take 2.2 million individuals out of paying Class 1 and Class 4 NICs and the Health and Social Care Levy.</p> <p>Self-employed individuals with profits between the Small Profits Threshold and Lower Profits Limit will continue to build up National Insurance credits but will not pay Class 2 NICs.</p>	6 July 2022
2.	Regulations will be required	<p>Right to work checks: COVID-19 concession extended</p> <p>The Home Office is currently operating a temporary concession due to COVID-19, to allow for remote right to work checks on candidates. Checks must be still made on all new employees as part of the onboarding process (regardless of nationality) and on existing employees where they are working on a time-limited visa, but rather than requiring physical checks, employers have been able to use the following processes:</p> <ul style="list-style-type: none"> • checks over video calls; • scanned documents or a photo of documents for checks using email or a mobile app, rather than originals (marking a digital copy of the document as “adjusted check undertaken on [insert date] due to COVID-19”); and • to the extent that a prospective or existing employee cannot provide any of the accepted documents, employers can use the Home Office's Employer Checking Service. <p>This concession will now end on 30 September 2022 (originally it was due to end on 17 May 2021 before being delayed until 20 June 2021 and then 31 August 2021, then 5 April 2022) meaning that employers must revert to conducting full right-to-work checks from 1 October 2022.</p> <p>The end date has been deferred following the Government's announcement enabling employers to use new technology to carry out digital checks on British and Irish citizens who hold a valid passport from 6 April 2022. The deferment will ensure employers have sufficient time to develop commercial relationships with Identity Service Providers, make the necessary changes to their pre-employment checking processes and carry out responsible on-boarding of their chosen provider.</p>	1 October 2022

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3.	The Health and Social Care Levy Act 2021	<p>Health and social care levy (and corresponding changes to NICs)</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 (NICs) from April 2022, to be replaced by a new health and social care levy based on National Insurance in April 2023. As a result, NICs increased by 1.25% on 6 April 2022.</p> <p>On 6 April 2023, section 1 of the Health and Social Care Levy Act 2021 will impose a tax, known as the health and social care levy, which is equal to 1.25% of the amount of earnings or profits in respect of which NICs are, or would be, payable. At the same time, NICs will reduce by 1.25%, as the levy will replace the previous NICs increase.</p>	6 April 2023
4.	Legislation will be required	<p>Statutory Code of Practice on Fire and Rehire</p> <p>On 29 March 2022, the government announced that a new Statutory Code of Practice will be published on the use of "fire and rehire" practices to bring about changes to employees' terms and conditions (one of nine measures to protect seafarers' rights in light of mass redundancies by P&O Ferries which took place without prior notice or consultation).</p> <p>In response to written questions, Paul Scully MP, Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (BEIS), confirmed that:</p> <ul style="list-style-type: none"> • a draft of the Statutory Code of Practice on dismissal and re-engagement will be published and representations, including from trade unions, will be considered in accordance with section 204 of the <i>Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA)</i>; • the scope of the code and remedies for breaches of it will be in accordance with TULRCA. Under section 207 of 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; • that legislation to lay the code will be introduced "when parliamentary time allows". <p>On 10 May 2022, BEIS issued a statement confirming how the government is supporting workers, where the Government reiterated their commitment to producing the statutory code on fire and rehire practices to "<i>clamp down on controversial tactics used by employers who fail to engage in meaningful consultations with employees before making changes to their contracts</i>".</p>	TBC

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5.	Future of Work Review	<p>Future of Work Review: to focus on key issues and challenges for the labour market for the future</p> <p>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.</p> <p>The Future of Work Review will be in 2 parts:</p> <ul style="list-style-type: none"> • a high level assessment of key strategic issues on the future of work; • a more detailed assessment of selected areas of focus from the first phase. <p>Potential issues for assessment, include but not limited to:</p> <ul style="list-style-type: none"> • the importance of place and local labour markets in creating and facilitating access to jobs; • the role of automation and how quickly it happens; • how to build on the "good" flexibility in the labour market and gig economy, but ensure sufficient protections to prevent exploitative practices. How to do this in a way that encourages growth and productivity. <p>The review will conclude with a written report, including recommendations to guide long-term, strategic policy making on the labour market, being submitted to the Prime Minister.</p>	Review in the spring and summer of 2022. No timetable yet for the written report.
6.	National Disability Strategy	<p>National Disability Strategy: removing barriers faced by disabled people in all aspects of their lives including work and business</p> <p>On 28 July 2021 the government published a National Disability Strategy setting out various steps that it will take to remove barriers faced by disabled people in all aspects of their lives including work, justice, politics, transport, housing and leisure services. It also made a commitment 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. It will also explore how government and employers can make workplaces more inclusive for disabled people and increase transparency. The consultation closed on 25 March 2022 and the Government's response is expected later in the summer of 2022.</p>	Consultation closed on 25 March 2022. The Government's response awaited.

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7.	There is currently no timeframe for the publication of the draft Employment Bill.	<p>New Employment Bill</p> <p>In the Queen's Speech on 19 December 2019, the Government announced that a new Employment Bill would be brought forward, to seek to protect and enhance workers' rights post-Brexit. The Bill is aimed at promoting fairness in the workplace, with the main elements including:</p> <ol style="list-style-type: none"> 1. Creating a new, single enforcement body to offer better protection for workers; 2. Ensuring that workers receive the tips left for them in full; 3. Introducing a new right for all workers to request a more predictable contract; 4. Extending redundancy protections to prevent discrimination against women and new parents (see separate entry); 5. Allowing parents to take extended leave for neonatal care; 6. Introducing an entitlement to one week's leave for unpaid carers; and 7. Subject to consultation, making flexible working the default unless employers have good reason not to. <p>On 16 March 2020, the Government confirmed that a new entitlement of up to 12 weeks' statutory leave and pay would be included in the Employment Bill to help support parents of babies requiring neonatal care. Costings within the Spring 2020 budget suggest that this new statutory right is likely to be introduced in 2023.</p> <p>On 26 April 2021, the Guardian reported that the Trade Union Congress, Maternity Action and the Fawcett Society are campaigning for the government to reform the underused shared parental leave scheme and to replace it with a new model of parental leave (within the new Employment Bill) which would give both parents non-transferable paid leave to care for their child.</p> <p>The Employment Bill was not mentioned in the Queen's Speech on 11 May 2021 nor on 10 May 2022. It has been reported that it will be introduced "when the time is right".</p>	<p>There is currently no timeframe for the publication of the draft Employment Bill</p> <p>The consultation on flexible working closed on 1 December 2021 and the government's response is awaited.</p>
8.	Legislation will be required	<p>Statutory right to a week's unpaid leave for unpaid carers</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,</p>	TBC

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		<p>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> <p>There is no immediate date for the introduction of the new leave provisions other than it will be introduced "when parliamentary time allows".</p>	
9.	Legislation will be required	<p>Staff tips to be retained in full</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 had been expected to be in the awaited new Employment Bill (see above) which is due to be introduced when parliamentary time allows.</p> <p>However, on 5 May 2022, it was reported that plans to legislate for workers to keep tips have been dropped for "the foreseeable future" (according to a senior government official). The Employment Bill was not mentioned in the Queen's Speech on 10 May 2022.</p>	TBC
10.	Regulations will be required	<p>Confidentiality clauses and non-disclosure agreements</p> <p>In July 2019, BEIS published the Government's response to its consultation on changes to regulations on confidentiality clauses, also known as non-disclosure agreements (NDAs). The final proposals include legislating to limit NDAs from restricting disclosures being made to police, regulated health care professionals and legal professionals. The consultation had been launched in response to concerns that some employers had been using confidentiality clauses to "gag" victims of workplace harassment or discrimination.</p> <p>Final proposals in the Government response include:</p> <ul style="list-style-type: none"> • legislating so that limitations in NDAs are clearly set out in employment contracts and settlement agreements • creating guidance for solicitors and legal professionals responsible for drafting settlement agreements 	TBC

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		<ul style="list-style-type: none"> legislating to enhance the independent legal advice received by individuals signing confidentiality clauses enforcement measures for confidentiality clauses that do not comply with legal requirements in written statements of employment particulars and settlement agreements. <p>Once the draft legislation has been published, employers will need to review confidentiality clauses and settlement agreements to ensure that they comply with the new rules.</p>	
11.	Regulations will be required	<p>Extending redundancy protection for women and new parents</p> <p>The Government announced in July 2019 that it intended to enhance redundancy protections for pregnant women and new parents. This had been a commitment in the Government's Good Work Plan (in response to the Taylor Review) and had been raised by the Women and Equalities Select Committee. In summary, the Government committed to:</p> <ul style="list-style-type: none"> ensure that the redundancy protection period applies from the point that the employee informs the employer that she is pregnant, whether orally or in writing; extend the redundancy protection period by/to six months once a new mother has returned to work; extend redundancy protection into a period of return to work for those taking adoption and shared parental leave; and establish a taskforce of employer and family representative groups (to make recommendations on what improvements can be made to the information available to employers and families on pregnancy and maternity discrimination and develop an action plan on what steps Government and other organisations can take to make it easier for pregnant women and new mothers to stay in work). <p>In the Queen's Speech on 19 December 2019, the Government announced that a new Employment Bill (see above) would be brought forward which would include these proposals. However, the Queen's Speech of 11 May 2021 and the Queen's Speech of 10 May 2022 both failed to mention the Employment Bill, although the Government has 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
12.	Regulations will be required	<p>Duty to prevent harassment in the workplace</p> <p>On 21 July 2021, the government published its response to the 2019 consultation on workplace sexual harassment in which it confirmed it would introduce a new duty on employers to prevent sexual harassment and third party harassment in the workplace. The government will also look closely at the possibility of extending time limits for</p>	TBC The International Labour Organisation's Violence and

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		<p>claims under the Equality Act 2010 from three to six months.</p> <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> <p>In the meantime, the UK ratified the International Labour Organisation's Violence and Harassment Convention on 7 March 2022, which will come into force on 7 March 2023. The Department for Work and Pensions confirmed that it still intends to introduce an obligation on employers to play an active role in the prevention of harassment in the workplace, both by employees and by third parties, to compliment the convention.</p>	<p>Harassment Convention will come into force on 7 March 2023</p>
13.	EU Directive on work-life balance for parents and carers	<p>Work-life balance for parents and carers</p> <p>This Directive is designed to increase the participation of women in the labour market and provides for an individual right to four months of parental leave, from which two months are non-transferable between the parents, paid at a level set by Member States. It also introduces carers' leave so that workers caring for relatives in need are able to take 5 working days per year for that purpose.</p> <p>The Directive came into force on 1 August 2019 and must be implemented by Member States within three years thereafter. As the UK has now left the EU, it is free to ignore any new EU directives, although the rebalancing provisions in the TCA state that if UK employment rights diverge significantly from the EU in a way that materially impacts trade or investment (based on reliable evidence and not merely on conjecture or remote possibility), then the EU can take "appropriate rebalancing measures" (including tariffs), subject to an arbitration process.</p> <p>The UK is proposing to introduce carers' leave in the forthcoming Employment Bill and already goes further than the draft Directive with regard to flexible working rights, although some adjustments in other areas would still be needed to align fully, such as to scrap the service requirement for paternity leave and to allow shared parental leave to operate in a way that can be exercised independently by each partner.</p>	<p>The Directive came into force on 1 August 2019 and must be implemented by Member States within three years (31 July 2022).</p> <p>As the UK has now left the EU, it is not obliged to implement the Directive, so it is unclear whether the UK will take steps to implement any aspects.</p>
14.	TBC	<p>Consultation on reforming the Human Rights Act 1998</p> <p>In December 2021, the government published a consultation, <i>Human Rights Act Reform: A Modern Bill of Rights</i> to consult on reforming the existing Human Rights Act 1998 and replacing it with a Bill of Rights.</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</p>	<p>The consultation closed on 8 March 2022 and the Government's response is awaited.</p>

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		<p>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".</p> <p>The consultation closed on 8 March 2022 and the Government's response is awaited. In the Queen's Speech on 10 May 2022, it was announced that "[the] <i>Government will ensure the constitution is defended...[and] restore the balance of power between the legislature and the courts by introducing a Bill of Rights.</i>" Main elements of the Bill are expected to include:</p> <ul style="list-style-type: none"> • Establishing the primacy of UK case law, clarifying there is no requirement to follow the Strasbourg case law and that UK Courts cannot interpret rights in a more expansive manner than the Strasbourg Court. • Ensuring that UK courts can no longer alter legislation contrary to its ordinary meaning and constraining the ability of the UK courts to impose 'positive obligations' on our public services without proper democratic oversight by restricting the scope for judicial legislation. • Guaranteeing that spurious cases do not undermine public confidence in human rights so that courts focus on genuine and credible human rights claims. The responsibility to demonstrate a significant disadvantage before a human rights claim can be heard in court will be placed on the claimant. 	
15.	TBC	<p>Consultation on measures to ban or impose mandatory compensation for non-compete clauses</p> <p>Driven by the need to be more competitive in the post-Covid-19 world, the Government consulted in February 2021 on measures to reform post-termination non-compete clauses in contracts of employment.</p> <p>Broadly, two measures to reform post-termination non-compete clauses in contracts of employment were proposed:</p> <p>(1) To impose mandatory compensation for the post-employment period that the employer wishes the employee to be restricted (similar to other jurisdictions such as France, Germany and Italy). Two complementary measures (transparency and a maximum period of non-compete), were also being considered alongside this option.</p> <p>(2) Alternatively, the other proposed measure was to ban non-compete clauses altogether (as is the case in California)</p> <p>The consultation closed on 26 February 2021 and the Government's response is awaited.</p>	The consultation closed on 26 February 2021 and the Government's response is awaited.
16.	TBC	<p>Consultation on measures to extend the ban on exclusivity clauses to contracts of employment where the guaranteed weekly wage is less than the lower earnings limit</p>	TBC

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		<p>On 9 May 2022, the government published the response to its consultation on measures to extend the ban on exclusivity clauses in employment contracts to cover low-paid workers whose guaranteed weekly income is less than the Lower Earnings Limit (LEL) (currently £123 per week).</p> <p>The government has decided to extend the ban on exclusivity clauses to contracts where the worker's guaranteed weekly income is below or equivalent to the LEL. It is estimated that 1.5 million workers currently earn £123 a week or less, which equates to almost 13 hours a week for someone on the National Living Wage (NLW). The reforms will mean that those workers can top up their income with extra work for other employers if they choose, as well as providing more flexibility over when and where they work and enable them to plan jobs around childcare or study. It will also help employers to widen the talent pool of job applicants and fill vacancies in sectors like retail and hospitality. The government estimates that the reform will have a low cost to businesses.</p> <p>The government will be taking forward legislation "in due course" to extend the ban on exclusivity clauses in employment contracts where the guaranteed weekly income is below or equivalent to the LEL, and to introduce related enforcement rights where a worker is unfairly dismissed or subjected to detriment for reasons relating to the ban.</p>	
17.	TBC	<p>Menopause discrimination in the workplace</p> <p>In July 2021 the House of Commons Women and Equalities Committee launched an inquiry into existing discrimination legislation and workplace practices around the menopause. The inquiry is seeking views on the extent of discrimination faced by menopausal people in the workplace and how government policy and workplace practices can better support those experiencing the menopause. The inquiry closed on 17 September 2021 and we await the government's findings.</p> <p>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.</p>	TBC

FUTURE KEY CASES

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
1.	Forstater v CGD Europe	<p>Religion and belief: was it discriminatory to decide not to renew a consultant's contract because of her philosophical (gender critical) beliefs?</p> <p>In June 2021, the EAT reversed a previous Employment Tribunal decision and held that the claimant's gender critical belief (including a belief that sex is immutable and should not be conflated with gender identity, and that trans women are men) was a philosophical belief qualifying for protection under the Equality Act 2010.</p> <p>The case was remitted to a freshly constituted employment tribunal to determine whether the claimant had suffered discrimination related to her belief. The case was heard on multiple dates between 7 and 23 March 2022 and judgment is awaited.</p>	Remitted ET hearing took place between 7-23 March 2022. Judgment is awaited.
2.	Mackereth v The Department for Work and Pensions	<p>Religion and belief: was a doctor discriminated against when he was suspended and then dismissed for refusing to address transgender patients by their chosen pronoun?</p> <p>An Employment Tribunal found that a doctor engaged to carry out health assessments for the Department for Work and Pensions was <u>not</u> discriminated against on the grounds of religion or belief for refusing to address transgender patients by their chosen pronoun.</p> <p>The Tribunal accepted that the doctor's Christianity was protected under the Equality Act 2010. However, after considering the test established in <i>Grainger plc and others v Nicholson [2010]</i>, it held that the doctor's particular beliefs that God only created males and females and that a person cannot choose their gender, his lack of belief in transgenderism, and his conscientious objection to transgenderism, were views incompatible with human dignity which conflicted with the fundamental rights of others and so were not protected religious or philosophical beliefs under the Equality Act 2010. The doctor appealed to the EAT. The hearing took place on 28 and 29 March 2022 and judgment is awaited.</p>	Hearing in EAT on 28 and 29 March 2022. Awaiting judgment.
3.	The Harpur Trust v Brazel	<p>Working time: how should holiday pay be calculated for part-year workers?</p> <p>The Court of Appeal held that ET was wrong to find that "part-year workers" i.e. those working only part of the year (in this case a visiting music teacher who only worked during term-time) should have their annual leave right capped at 12.07% of annualised hours as advised in the Acas Guidance.</p> <p>Permission to appeal was granted on 19 June 2020. The appeal 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.

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4.	Climer-Jones v Cardiff and the Vale University Local Health Board	<p>Whistleblowing protection: Compensation and remedies</p> <p>An employment tribunal found that the claimant had been subject to unlawful detriments on the grounds of having made protected disclosures and was unfairly dismissed, contrary to s47B and s103A of the Employment Rights Act 1996. The tribunal commented that this was one of the most serious and sustained cases of systemic bullying it had seen and found that, in addition to suffering several detriments, Ms Climer-Jones had experienced the highest degree of hurt feelings, distress and impact on her family life. The case was heard by the EAT on 29 April 2022. Awaiting judgment.</p>	Heard by the EAT on 29 April 2022. Awaiting judgment.
5.	Kong v Gulf International Bank (UK) Ltd	<p>Unfair dismissal: attributing motivation to the employer.</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 was granted on 28 January 2022. The case was heard by the Court of Appeal on 26 May 2022.</p>	Heard by the Court of Appeal on 26 May 2022. Judgment is awaited.
6.	Higgs v Farmor's School	<p>Religion and belief: what amounts to a protected belief?</p> <p>The Employment Tribunal held that a Christian employee's beliefs that gender cannot be fluid and that an individual cannot change their biological sex or gender were worthy of respect in a democratic society and could therefore be protected beliefs. The respondent has appealed to the EAT. The case is due to be heard on 22 June 2022.</p>	To be heard in the EAT on 22 June 2022.
7.	USDAW v Tesco Stores Ltd	<p>Contractual terms: was the High Court correct to imply a contractual term preventing an employer from exercising a contractual right to terminate on notice in order to remove a right to enhanced 'retained' pay and granting an injunction against a proposal to 'fire and rehire' for that purpose?</p> <p>In <i>Usdaw & Ors v Tesco Stores Ltd</i>, the High Court granted an injunction to stop Tesco from withdrawing a contractual benefit by means of dismissal and re-engagement of certain employees.</p> <p>The benefit in question had been negotiated and agreed in the 1990s as an alternative to redundancy and as an incentive to relocate. It was said to be "guaranteed for life" and could only be changed by mutual consent or on promotion to a new role.</p> <p>The High Court acknowledged the unusual facts of the case but concluded that a term should be implied into the affected contracts that Tesco's right to terminate those contracts on notice could</p>	To be heard in the Court of Appeal on 9 June 2022.

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		not be exercised for the purpose of removing or diminishing the affected employees' right to the benefit. Tesco appealed to the Court of Appeal and the case is due to be heard on 9 June 2022.	
8.	Pelter v Buro Four Project Services Ltd	<p>PHI benefits: was it discriminatory to withdraw PHI before the age of 65 or state pension age?</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.
9.	Amdocs Systems Group Ltd v Langton	<p>PHI benefits: was an employer liable to pay income protection payments not covered by insurance?</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. The case is due to be heard in the Court of Appeal on 28 and 29 June 2022.</p>	Due to be heard by Court of Appeal on 28 and 29 June 2022.
10.	Tyne and Wear Passenger Transport Executive t/a Nexus v National Union of Rail, Maritime and Transport Workers and another	<p>Remedy of Rectification: can an employer claim rectification for a collective agreement?</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.
11.	Benyatov v Credit Suisse Securities (Europe) Ltd	<p>Duty of care: consideration of employer's duty to protect employees from criminal conviction and duty to indemnify.</p> <p>The High Court dismissed a former investment banker's claim for breach of a duty of care to protect him from criminal conviction in the performance of his duties and of the implied duty to indemnify</p> <p>The appeal is due to be heard by the Court of Appeal on 11 October 2022.</p>	Due to be heard by the Court of Appeal on 11 October 2022.

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12.	Chief Constable of the Police Service of Northern Ireland and another v Agnew and others	<p>Holiday Pay: Whether a series of deductions is broken by three-month gap</p> <p>The Northern Ireland Court of Appeal held that a "series" of unlawful deductions from holiday pay would not be interrupted by gaps of more than three months.</p> <p>Due to be heard by the Supreme Court on 14 and 15 December 2022.</p>	Due to be heard by the Supreme Court on 14 and 15 December 2022.
13.	Fentem v Outform EMEA Ltd	<p>Ending employment: what constitutes a dismissal?</p> <p>Whether an employer advancing a termination date on payment of a contractual PILON amounts to a dismissal. The EAT upheld the Employment Tribunal's decision that it did not. The case has been appealed to the Court of Appeal.</p>	Due to be heard in the Court of Appeal between 31 January 2023 and 1 February 2023.
14.	Manjang v Uber, Raja v Uber	<p>Discrimination: Uber workers to challenge facial recognition software as discriminatory.</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 Tribunal.
15.	Mhindurma v Lovingangels Care Ltd	<p>Covid-19: Should furlough have been used as an alternative to redundancy.</p> <p>The employment tribunal held that where an employer has failed to consider furlough under the CJRS as an alternative to redundancy, the dismissal was procedurally unfair. Permission to appeal to the EAT granted. Awaiting listing for full hearing.</p>	Permission to appeal to the EAT granted. Awaiting listing for full hearing.
16.	Ryanair DAC v Morais	<p>Trade Unions: are striking employees protected from detriment under TULRCA and the Blacklisting Regulations?</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.</p>	<p>Stood out by the Court of Appeal on 11 April 2022.</p> <p>Stayed until the Supreme Court has given a decision on the permission to appeal sought in the case of <i>Mercer v Alternative Future Group Ltd</i>.</p>

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		<p>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 <i>Mercer v Alternative Future Group Ltd</i>.</p>	
17.	Accattatis v Fortuna Group (London) Ltd	<p>Unfair dismissal: was it automatically unfair to dismiss for concerns about commuting and attending the office during lockdown?</p> <p>An Employment 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.	Mercer v Alternative Future Group Ltd	<p>Trade Unions: whether protection from detriment for participating in industrial action should be read into TULRCA.</p> <p>The EAT held that a lack of protection from detriment for having participated in strike action under s.146 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) was a breach of Article 11 of the European Convention on Human Rights and that such protection should therefore be read into s.146 TULRCA.</p> <p>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.</p> <p>Permission to appeal to the Supreme Court has been sought.</p>	Permission to appeal to the Supreme Court has been sought – a decision is awaited.
19.	Arvunescu v Quick Release Automotive Ltd	<p>Settlement: Whether a claim for aiding discrimination under s 112 EqA 2010 was caught by the terms of a COT3.</p> <p>The EAT held that the COT3 was worded in very wide terms, applying to any claims arising 'directly or indirectly out of or in connection with' his employment and therefore covered a claim brought after the COT3 had been signed. Permission to appeal to the Court of Appeal has been sought.</p>	Awaiting permission to appeal to the Court of Appeal.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
20.	Steer v Stormsure Ltd	<p>Interim Relief: Whether lack of interim relief in discrimination cases is incompatible with the right to a private life under Art 8 ECHR read with Art 14 ECHR.</p> <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).</p> <p>Permission to appeal to the Supreme Court is being sought.</p>	Permission to appeal to the Supreme Court is being sought.
21.	Jones v JP Morgan Securities plc	<p>Unfair dismissal: Re-engagement order made for trader unfairly dismissed for alleged involvement in spoofing</p> <p>Mr Jones had been unfairly dismissed for gross misconduct, purportedly for involvement in market abuse activities four years previously, but which had been found to be untrue. In holding that it would not be practicable to reinstate him, the tribunal ordered that the employee be re-engaged, at an associated employer in Hong Kong rather than in the UK, and awarded him a sum of over £1.5 million reflecting his lost salary and benefits for the period between dismissal and re-engagement.</p> <p>Permission to appeal to the EAT has been sought. Awaiting sift by judge.</p>	Permission to appeal to the EAT has been sought. Awaiting sift by judge.

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