EMPLOYMENT AND IMMIGRATION HORIZON SCANNER

19 October 2022

ADDLESHAW GODDARD

FUTURE KEY LEGISLATION DEVELOPMENTS

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
1.	Health and Social Care Levy (Repeal) Bill	**Reversal of the previous increase to National Insurance Contributions and Repeal of the Health and Social Care Levy** (from the *'Growth Plan 2022'*) On 6 April 2022, a temporary increase of 1.25% in the rates of some National Insurance Contributions (**NICs**) came into force, to be replaced by a new Health and Social Care Levy based on National Insurance from April 2023. As a result, NICs increased by 1.25% on 6 April 2022. On 23 September 2022, the former Chancellor, Kwasi Kwarteng, gave a fiscal statement to Parliament and announced significant tax cuts and other policies which included an announcement that: • The 1.25% increase to NICs will be reversed from 6 November 2022; and • The Health and Social Care Levy due to take effect on 6 April 2023 will be cancelled through the Health and Social Care Levy (Repeal) Bill. This means that NIC rates will be cut by 1.25% for employees, employers and the self-employed, effectively reversing the uplift introduced in April 2022 for the rest of the tax year. This cut will take effect from 6 November 2022 and it will cover Class 1 (both employee and employer), Class 1A, Class 1B and Class 4 (self-employed) NICs. The ring-fenced Health and Social Care Levy of 1.25% due to be introduced from April 2023 will also not go ahead. It had been expected to raise around £13 billion a year to fund health and social care. On 17 October 2022, the new Chancellor, Jeremy Hunt, delivered a statement ahead of the Medium-Term Fiscal Plan on 31 October 2022 confirming a number of changes to measures previously announced in the Growth Plan 2022 including: • confirmation that the reversal of the 1.25% increase to NICs will remain. • the cancellation of the Health and Social Care Levy will still go ahead	6 November 2022
2.	Final report (EBA/GL/2022/06) and Final report (EBA/GL/2022/07)	**EBA final reports on guidelines on benchmarking exercises on remuneration practices and gender pay gap under CRD IV Directive and IFD.** The European Banking Authority (EBA) has published:	Due to be published by 31 December 2022

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		• Final report (EBA/GL/2022/06) on guidelines on the benchmarking exercises on remuneration practices, the gender pay gap and approved higher ratios under the CRD IV Directive (2013/36/EU). These guidelines will repeal and replace the EBA's July 2014 guidelines on the remuneration benchmarking exercise (EBA/GL/2014/08) • Final report (EBA/GL/2022/07) on guidelines on the benchmarking exercises on remuneration practices and the gender pay gap under the Investment Firms Directive ((EU) 2019/2034) (IFD). • Both sets of guidelines apply from 31 December 2022. The first data collection under the new guidelines will be conducted in 2023 for the financial year 2022 and the first data on the gender pay gap will be collected in 2024 for the financial year 2023. These new Guidelines follow the EBA's consultation in January 2022.	
3.	International Labour Organisation's Violence and Harassment Convention Proposals for a new duty to prevent harassment in the workplace	**Harassment: (1) International Labour Organisation's Violence and Harassment Convention comes into effect; and (2) A new mandatory duty to prevent harassment in the workplace** 1. On 7 March 2022, the UK ratified the International Labour Organisation's (**ILO**) Violence and Harassment Convention. The Convention will come into force on 7 March 2023. 2. 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. 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. However, there is no immediate date for when the new mandatory duty will be introduced, other than "*as soon as Parliamentary time allows*".	ILO Convention: 7 March 2023 New mandatory duty to prevent harassment in the workplace: TBC (to be introduced "*as soon as parliamentary time allows*")
6.	Review of hybrid and distance working	**New ways of working: Review of hybrid and distance working by the Office for Tax Simplification (including a Call for Evidence)** On 27 July 2022, the Office of Tax Simplification (**OTS**) published a review of hybrid and distance working *scoping document*, setting out the scope of its new review on hybrid and distance working.	Call for Evidence: Closes 25 November 2022 Findings report: Early 2023

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		On 31 August 2022, the OTS published a call for evidence to inform the review. The OTS seeks evidence of trends in relation to increasing numbers of people choosing to work in different ways, including across borders. Whether the tax and social security rules are flexible enough to cope, and what businesses, advisors and other bodies are experiencing as new ways of working become business as usual will also be considered. The Call for Evidence closes on 25 November 2022. The review was published on 27 July 2022 and a findings report is due to be published in early 2023.	
7.	Diversity and inclusion resources for employers, and guidance on positive action	**Diversity & Inclusion: New resources and guidance on positive action due by Spring 2023** On 17 March 2022, in the Inclusive Britain Report the government committed to publishing diversity and inclusion resources for employers, and guidance on positive action by Spring 2023. Investment in the EHRC was also announced and is intended for the Commission to use to challenge race discrimination through investigations and supporting individual cases.	Spring 2023
8.	No change	**The off-payroll working reforms** On 23 September 2022, the former Chancellor, Kwasi Kwarteng, gave a fiscal statement to Parliament and announced significant tax cuts and other policies. (The Treasury published The Growth Plan 2022, following the statement – now largely out of date). The statement included an announcement that the 2017 and 2021 reforms to the off-payroll working rules (also known as IR35) would be repealed from 6 April 2023. On 17 October 2022, the new Chancellor, Jeremy Hunt, delivered a statement ahead of the Medium-Term Fiscal Plan on 31 October 2022 confirming a reversal of the plan to repeal the 2017 and 2021 reforms to the off-payroll working rules (IR35). **The off-payroll working rules (IR35) will now remain in place**.	Unchanged
9.	The Retained EU Law (Revocation and Reform) Bill 2022	**Sunset on Retained EU Law: The Retained EU Law (Revocation and Reform) Bill** The Government is looking to remove or replace retained EU law and on 22 September it presented the Retained EU Law (Revocation and Reform) Bill 2022 to Parliament. Following Brexit and to ease the transition out of the EU, the body of applicable EU law which was in force in the UK on 31 December 2020 was kept on the statute books and became known as "retained EU law".	31 December 2023

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		The rationale set out in the Government's press release following publication of the Bill explains that, "…having mapped where EU-derived legislation sits on the UK statute book, [the Government] is bringing forward this Bill in order to fully realise the opportunities of Brexit, and to support the unique culture of innovation in the UK." • The Bill provides that EU-derived secondary legislation and retained direct EU legislation will expire on 31 December 2023 unless otherwise expressly preserved by ministerial order. This would include many regulations that impact employment practices, such as the Working Time Regulations 1998, Agency Worker Regulations 2010 and Fixed Term Employee Regulations 2002. • Before 31 December 2023, Government departments and the devolved administrations will determine which retained EU law can expire, and which needs to be preserved and incorporated into domestic law. They will also decide if retained EU law needs to be codified as it is preserved, in order to preserve policy effects the Government intends to keep. • Any retained EU law that remains in force after the sunset date will be assimilated in the domestic statute book, by the removal of the special EU law features previously attached to it. This means that the principle of the supremacy of EU law, general principles of EU law, and directly effective EU rights will also end on 31st December 2023. • The Bill includes an extension mechanism for the sunset of specified pieces of retained EU law until 2026. Should it be required, this will allow departments additional time where necessary to assess whether some retained EU law should be preserved. • The Bill would also end the supremacy of EU law and make it easier for courts and tribunals to depart from existing EU-derived domestic case law. The Bill is far reaching and has huge implications for employment law in the UK. In particular, areas such as TUPE, paid annual holiday, the 48 hour working week, part-time and fixed-term worker regulations and the agency worker regulations will all be impacted by the Bill, but it is not yet known what the Government proposes in relation to these specific areas. The relevant retained EU laws must now be incorporated into domestic law in time or risk being lost, but the Government may take this opportunity to reform the law and to bring about change on certain key issues, for example, in the calculation of holiday pay or the ability to change terms and conditions of employment following a TUPE transfer. This will have a significant impact on businesses because of the immediate uncertainty over employment law reforms which may now be on the horizon. One point to note is that under the European Trade and Cooperation Agreement, if changes to UK employment law have a material effect on trade and investment or reduce employment rights, the UK may face tariffs from the EU. It remains to be seen what effect the sanction of such enforcement measures will have on the scope of reforms. The First Reading in the House of Commons took place	

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		on 22 September 2022. It is understood that the House of Commons Library will publish a full briefing on the Bill ahead of second reading, the date for which has yet to be announced.	
10.	The Exclusivity Terms for Zero Hours Workers (Unenforceability and Redress) Regulations 2022	**Extending the ban on exclusivity clauses in employment contracts to low-income workers** In 2015, the use of exclusivity in employment contracts was banned in zero-hours contracts. Section 27A(3) of the Employment Rights Act 1996 (ERA 1996) renders void and unenforceable any provision in a zero-hours contract which prohibits a worker from either (a) doing work or performing services under another contract or under any other arrangement; or (b) doing work or performing services under another contract or under any other arrangement without the employer's consent. Following a consultation which closed in 2021, the Government announced that it will legislate to widen the ban on exclusivity clauses to also make them unenforceable in employment contracts where the guaranteed weekly income is below or equivalent to the Lower Earnings Limit (currently £123 a week). The new legislation will also make available the rights to: • not to be unfairly dismissed; • not to be subjected to a detriment for failing to comply with an exclusivity clause; and • to claim compensation. The draft regulations were laid before Parliament on 6 July 2022 and are pending approval. They will come into force 28 days after they are made.	Draft regulations were laid before Parliament on 6 July 2022 and are pending approval The regulations will come into force 28 days after they are made
11.	TBC	**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.	TBC: Voluntary reporting guidance had been expected by the end of Summer 2022
12.	Legislation will be required	**Industrial action legislation: to provide minimum service levels for transport services and to help settle industrial disputes** (from the *'Growth Plan 2022'*)	TBC

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		On 23 September 2022, the former Chancellor, Kwasi Kwarteng, gave a fiscal statement to Parliament and announced significant tax cuts and other policies. The Treasury published The Growth Plan 2022, following the statement. The Growth Plan provides that new legislation will be brought in to ensure that minimum service levels can be put in place for transport services. This will aim to limit the impact that industrial action has on journeys. The government is also taking action to make it easier to settle industrial disputes by ensuring meaningful employer pay offers are put to employees. On 17 October 2022, the new Chancellor, Jeremy Hunt, announced a number of changes to measures previously contained in the Growth Plan 2022. No further announcement has been made on the planned industrial action legislation outlined above. On 16 October 2022, it was reported in the media that a government source reiterated its commitment to introducing legislation for minimum service levels for transport services which it expects to come into force in 2023.	
13.	The UK's bonus cap rules will need to be varied or revoked	**Removal of the cap on bankers' bonuses** (from the '*Growth Plan 2022*') On 23 September 2022, the former Chancellor, Kwasi Kwarteng, gave a fiscal statement to Parliament announcing significant tax cuts and other policies, including the removal of the current cap to bankers' bonuses. The Treasury published The Growth Plan 2022, following the statement. Currently, the bonus cap limits remuneration of certain bank staff to 100% of their fixed pay (or 200% with shareholder approval). However, in the section titled "*Enabling companies to focus on business*", clause 4.9 of the Growth Plan states that, as pay in bonuses aligns the incentives of individuals with those of the bank, in turn supporting growth in the UK economy, the Prudential Regulation Authority (**PRA**) will remove the current cap. The UK's bonus cap rules (that implement the Capital Requirements Directive (**CRD)**) are in the *Remuneration* and *Remuneration Code* parts of the PRA Rulebook and the Financial Conduct Authority (**FCA**) Handbook. These rules will need to be varied or revoked to remove the 100% and 200% bonus caps. As the PRA and the FCA usually vary or revoke their rules by consulting on the changes they would like to make, considering the responses, making their final rules and then arranging for them to come into force at a future date, it could still be many months before the caps are removed. On 17 October 2022 the new Chancellor, Jeremy Hunt, announced a number of changes to measures previously contained in the Growth Plan 2022. There was no mention of the planned removal of the cap on bankers' bonuses	TBC

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		in his statement, but the Treasury has confirmed that the plan to remove the cap will go ahead and the PRA will hold a consultation on the plans later this year.	
14.	Various Private Members' Bills – see *Summary and Impacts* There is currently no timeframe for the publication of the draft Employment Bill. However, the Government has indicated that it may seek to legislate by 'other methods' and has recently provided Government backing to some Private Members Bills containing proposals on the same lines as those contained within the Employment Bill	**New Employment Bill** 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 and promote fairness in the workplace. The main elements included: 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; 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. 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 suggested that this new statutory right is likely to be introduced in 2023. 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. However, 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*". In the meantime, the Government has recently confirmed its backing for two new Private Members Bills regarding the **provision of neonatal care leave and pay** and **the allocation of gratuities, service charges and tips to go to staff in full**, which both seek to introduce measures previously contained in the Employment Bill.	There is currently no timeframe for the publication of the draft Employment Bill. However, in summer 2022, the Government outlined backing for some new Private Members Bills which would introduce some of the measures previously contained in the Employment Bill as follows: • the **provision of neonatal care leave and pay** (confirmed Government backing); • the **allocation of gratuities, service charges and tips to go to staff in full** (confirmed Government backing); • **extending redundancy protections to prevent discrimination against women and new parents** (provisional Government backing); and • **introducing an entitlement to one**

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		It was also reported in June 2022 that the Government provisionally backs a Private Members Bill announced by Dan Jarvis MP which intends to **extend the period in which pregnant women and workers returning from parental leave are protected from redundancy** (another Employment Bill proposal) and on 19 July 2022, Lord True advised in a Parliamentary debate that the Government is considering whether to lend its support to the **Carer's Leave Bill** which makes provision about unpaid leave for employees with caring responsibilities (again, this was previously outlined within the draft Employment Bill). While Private Members' Bill usually do not become law, with Government backing, it is likely that these may find their way onto the statute book.	**week's leave for unpaid carers** (considering support for). The consultation on flexible working closed on **1 December 2021** and the government's response is awaited.
15.	Legislation will be required	**Statutory Code of Practice on Fire and Rehire** 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). In response to written questions, Paul Scully MP, Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (**BEIS**), confirmed that: • 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 *Trade Union and Labour Relations (Consolidation) Act 1992* (**TULRCA**); • 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". 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 "*clamp down on controversial tactics used by employers who fail to engage in meaningful consultations with employees before making changes to their contracts*".	TBC

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16.	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: • 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. • The first phase – the high level assessment of key strategic issues - is now complete (see Matt Warman MP's Response here). The Government will now look into 4 key areas: ○ AI and automation - continue to consider what it can do to promote the UK to continue to be a world leader in AI and explore what more can be done to map and support areas more susceptible to the pace of change. ○ Skills- support initiatives to enable a more agile approach to the approval and delivery of training. ○ Place and flexibility – consider rights of those who wish to work flexibly and develop a better understanding of what it means for different groups within the workforce. ○ Workers' Rights – encouraging transparency on what business now expect from their workers and when. Work to establish best practice and set clear expectations. There is no indication yet of when phase 2, the detailed analysis will be delivered. 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.	TBC. Review in Spring / Summer of 2022. No timetable yet for the written report
17.	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:	The consultation closed on 26 February 2021 and the Government's response is awaited

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		(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 and the Government's response is awaited.	
18.	The Judicial Review and Courts Act 2022	**Employment tribunals and EAT: new procedure rules** Provisions within the Judicial Review and Courts Act 2022 (**JRCA**) will establish a new online procedure for civil proceedings and an Online Procedure Rule Committee (**OPRC**) that will be able to make new Online Procedure Rules (**OPR**) effective in courts and tribunals including the employment tribunals and the EAT. The JRCA received Royal Assent on 28 April 2022 and the relevant provisions are to be brought in by regulations in due course. The Employment Tribunal Rules 2013 and the Employment Appeal Tribunal Rules 1993 remain in place until replaced.	Regulations will be required
19.	The Police, Crime, Sentencing and Courts Act 2022	**Rehabilitation of offenders** Under section 193 of the Police, Crime, Sentencing and Courts Act 2022 (**PCSCA**) the time it takes for certain convictions to become 'spent' so that they are no longer automatically disclosed on employment checks will be reduced so that: (1) custodial sentences of up to one year become 'spent' after 12 months without re-offending; (2) convictions between one to four years become 'spent' after four crime-free years; and (3) sentences of over four years do not need to be automatically disclosed to employers where there has been a seven-year period of rehabilitation. The changes do not apply to convictions relating to serious sexual, violent or terrorist offences for which the sentence was four years or more. The PCSCA received Royal Assent on 28 April 2022 and the relevant provision is to be brought in by regulations in due course.	Regulations will be required.
20.	TBC	**Menopause discrimination in the workplace**	TBC

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		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 sought 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, House of Commons Women and Equalities Committee responded to that inquiry by publishing a report which advocates 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 calls on the Government to amend the Equality Act 2010 to introduce menopause as a protected characteristic, and include a duty for employers to provide reasonable adjustments for menopausal employees. In the meantime: • 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 Department for Work and Pensions publication illustrates the Government's response to a government commissioned independent report through the 50PLUS Roundtable on Menopause and the Workplace, published in November 2021. This document outlines response to the report's recommendations, which are intended to introduce change in relation to menopause support in key areas of government policy, employer practice, and wider societal and financial change.	
21.	Bill of Rights 2022-2023 – no further progression	**No further progression of the 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. However, 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.	None

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22.	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 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, although it has been reported as "not imminent".	The consultation closed on 25 March 2022. The Government's response is awaited – but is not expected imminently.

FUTURE KEY CASES

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
1.	Climer-Jones v Cardiff and the Vale University Local Health Board	**Whistleblowing protection: Compensation and remedies** 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.	Heard by the EAT on 29 April 2022. Awaiting judgment.
2.	Tyne and Wear Passenger Transport Executive t/a Nexus v National Union of Rail, Maritime and Transport Workers and another	**Remedy of Rectification: can an employer claim rectification for a collective agreement?** 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	Heard in part by the Court of Appeal on 20 July 2022 with the rest

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		reached on the basis of a mistake. The case has been appealed to the Court of Appeal and has been heard in part with the rest of the hearing and judgment pending.	of the hearing and judgment pending.
3.	Benyatov v Credit Suisse Securities (Europe) Ltd	**Duty of care: consideration of employer's duty to protect employees from criminal conviction and duty to indemnify** 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. The appeal was heard by the Court of Appeal on 11- 13 October 2022.	Heard by the Court of Appeal on 11 – 13 October 2022.
4.	Chief Constable of the Police Service of Northern Ireland and another v Agnew and others	**Holiday Pay: Whether a series of deductions is broken by three-month gap** Contrary to the EAT's decision in *Bear Scotland v Fulton*, the Northern Ireland Court of Appeal held in 2019 that a "series" of unlawful deductions from holiday pay would not necessarily be interrupted by gaps of more than three months. Due to be heard by the Supreme Court on 14 and 15 December 2022.	Due to be heard by the Supreme Court on 14 and 15 December 2022.
5.	Rodgers v Leeds Laser Cutting Ltd	**Unfair dismissal: Serious and imminent danger** 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. Permission to appeal to the Court of Appeal was granted on 8 August 2022 and the hearing is listed for 3 November 2022.	Due to be heard in the Court of Appeal on 3 November 2022.
6.	Fentem v Outform EMEA Ltd	**Ending employment: what constitutes a dismissal?** 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.	Due to be heard in the Court of Appeal on 31 January 2023 or 1 February 2023.
7.	Manjang v Uber, Raja v Uber	**Discrimination: Uber workers to challenge facial recognition software as discriminatory.** 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	Awaiting hearing date to be listed in the Employment Tribunal.

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		(IWGB) and App Drivers or Couriers Union (ADCU). The cases are due to be heard by an employment tribunal with hearing dates awaited.	
8.	Mhindurma v Lovingangels Care Ltd	**Covid-19: Should furlough have been used as an alternative to redundancy.** 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.	Permission to appeal to the EAT granted. Awaiting listing for full hearing.
9.	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.*
10.	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 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.	Permission to appeal to the Supreme Court has been sought – a decision is awaited.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		Permission to appeal to the Supreme Court has been sought.	
11.	Arvunescu v Quick Release Automotive Ltd	**Settlement: Whether a claim for aiding discrimination under s 112 EqA 2010 was caught by the terms of a COT3.** 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 was granted on 4 July 2022. Awaiting hearing date.	Awaiting a hearing date in the Court of Appeal.
12.	Jones v JP Morgan Securities plc	**Unfair dismissal: Re-engagement order made for trader unfairly dismissed for alleged involvement in spoofing** 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. Permission to appeal to the EAT has been sought. Awaiting sift by judge.	Permission to appeal to the EAT has been sought. Awaiting sift by judge.
13.	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. HMRC appealed to the Supreme Court and permission to appeal was granted by the Supreme Court on 9 August 2022.	Permission to appeal to the Supreme Court has been granted. Awaiting a hearing date.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
14.	R (on the application of Palmer) v Northern Derbyshire Magistrates' Court	**Collective redundancies: Can administrators be prosecuted personally for failing to notify Secretary of State of collective redundancies?** Mr Palmer brought a judicial review of the decision to prosecute him as an administrator under TULR(C)A 1992, s 194, arguing that administrators should not fall within the definition of section 194(3) of those potentially criminally liable — 'any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity' — as administrators' authority derives from the Insolvency Act, not the company, making their position distinguishable. In November 2021 the High Court held that administrators may be liable personally for the offence in exactly the same way as company directors. On 12 August 2022 the Supreme Court granted permission to appeal. Awaiting a hearing date in the Supreme Court.	Permission to appeal to the Supreme Court has been granted. Awaiting a hearing date.
15.	Kocur v Angard Staffing Solutions Ltd and anor	**Agency Workers: Can agency workers been employed on the same terms as directly recruited employees?** The Court of Appeal upheld the EAT's decision that Regulation 13(1) of the Agency Workers Regulations 2010 (SI 2010/93), read in conjunction with Article 6 of the Temporary Agency Workers Directive (EC) 2004/104, only entitled the appellant agency worker to be notified of appropriate jobs on the same basis as directly recruited employees. It dismissed the claim that these Regulations entitle agency workers to apply for and/or be considered for such notified jobs on the same terms as directly recruited employees.	Permission to appeal to the Supreme Court has been granted. Awaiting a hearing date.
16.	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.	Permission to appeal to the Supreme Court is currently being sought.
17.	Tuitt v London Borough of Richmond upon Thames	**TUPE: are the activities pre and post service provision change fundamentally different?**	Permission to appeal to the Court of Appeal

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		EAT held that when determining whether or not there has been a service provision change under TUPE, the focus is on the activity undertaken and whether and to what degree this has changed after the alleged transfer. If the activity is fundamentally different, it does not matter that it arose due to staff availability. On the facts, when the contractor stopped providing dedicated CCTV monitoring services, this dedicated resource was not replaced and instead, the CCTV monitoring was absorbed by staff who were principally carrying out other work. The claimant maintained there had been a TUPE transfer by reason of a service provision change because the same activities were still being carried out and said that the tribunal should disregard any differences that had occurred because of staff availability issues. However, both the employment tribunal and EAT rejected this argument, stating that the focus should solely be on the activities pre and post the alleged transfer and not the reasons for any changes.	has been sought. Application also made for an extension of time. Awaiting decision on the papers.
18.	Hope v British Medical Association	**Unfair dismissal: was dismissal for bringing numerous grievances which the claimant refused to progress or withdraw fair?** The EAT held that the claimant had been fairly dismissed for bringing numerous vexatious and frivolous grievances and refusing to comply with a reasonable management instruction to attend grievance meetings. The appeal was on the basis that the tribunal had wrongly concluded that the claimant's actions could have been construed as gross misconduct in the contractual sense. The EAT held that not every case will have such a contractual element and where there is no contractual element the tribunal is not required to determine whether the conduct amounted to a contractual breach. It held that the claimant has been unfairly dismissed as the conduct did amount to gross misconduct as given the size of the employer and its administrative resources, the respondent had acted reasonably.	Appeal due to be heard in the Court of Appeal on 2 February 2023.

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