

# EMPLOYMENT AND IMMIGRATION HORIZON SCANNER



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September 2022

## FUTURE KEY LEGISLATION DEVELOPMENTS

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
1.	The Apprenticeships (Miscellaneous Provisions) (Amendment) (No. 2) (England) Regulations 2022 (SI 2022/949)	<p><b>Apprenticeships: New alternative English apprenticeship will enable prisoners to undertake apprenticeships without the need for an approved English apprenticeship agreement</b></p> <p>In February 2022, the government announced plans to introduce regulations to enable those serving sentences in open prisons in England to apply for apprenticeship opportunities. On 8 September 2022, the Apprenticeships (Miscellaneous Provisions) (Amendment) (No. 2) (England) Regulations 2022 (SI 2022/949) (<b>Regulations</b>) were made. The Regulations create a new alternative English apprenticeship to enable prisoners to undertake apprenticeships without the need for an approved English apprenticeship agreement with its associated status of being a contract of employment. The Regulations provide that the arrangement should have a minimum duration of 12 months, in line with wider apprenticeship programme requirements.</p> <p>The intention is for the programme to initially be aimed at prisoners already on release on temporary licence and working for a placement provider. Depending on the success of the scheme, HM Prisons and Probation Service will consider whether other prisoners will be able to take part. The development follows the introduction of flexi-job apprenticeships, (another new type of alternative English apprenticeship) which came into force in April 2022.</p>	30 November 2022
2.	Regulations will be required	<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 <a href="#">will now end on 30 September 2022</a> (originally it was due to end on 17 May 2021 before being delayed until 20 June 2021, 31 August 2021, and then 5 April 2022) meaning that employers must revert to conducting full right-to-work checks from 1 October 2022. The end date has been deferred following the <a href="#">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</a>. The deferment will ensure employers have sufficient time to develop commercial relationships with Identity</p>	1 October 2022

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		Service Providers, make the necessary changes to their pre-employment checking processes and carry out responsible on-boarding of their chosen provider.	
3.	<a href="#">Final report</a> (EBA/GL/2022/06) and <a href="#">Final report</a> (EBA/GL/2022/07)	<p><b>EBA final reports on guidelines on benchmarking exercises on remuneration practices and gender pay gap under CRD IV Directive and IFD.</b></p> <p>The European Banking Authority (EBA) has published:</p> <ul style="list-style-type: none"> <li>• <a href="#">Final report</a> (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)</li> <li>• <a href="#">Final report</a> (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).</li> </ul> <p>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.</p> <p>These new Guidelines follow the EBA's <a href="#">consultation</a> in January 2022.</p>	Due to be published by 31 December 2022
4.	International Labour Organisation's Violence and Harassment Convention  Proposals for a new duty to prevent harassment in the workplace	<p><b>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</b></p> <p>The UK ratified the International Labour Organisation's (ILO) Violence and Harassment Convention on 7 March 2022. The Convention will come into force on 7 March 2023.</p> <p>The Department for Work and Pensions (DWP) also has plans 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 such as customers and clients. 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.</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>	The ILO Convention comes into effect on 7 March 2023  The new mandatory duty to prevent harassment in the workplace will be introduced "as soon as <i>parliamentary time allows</i> "

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		There is no immediate date for when the new mandatory duty will be introduced, other than "as soon as Parliamentary time allows".	
5.	The Health and Social Care Levy Act 2021	<p><b>Health and social care levy (and corresponding changes to NICs)</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 (<b>NICs</b>) 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
6.	Review of hybrid and distance working	<p><b>New ways of working: Review of hybrid and distance working by the Office for Tax Simplification (including a Call for Evidence)</b></p> <p>On 27 July 2022, the Office of Tax Simplification (<b>OTS</b>) published a review of hybrid and distance working <a href="#">scoping document</a>, setting out the scope of its new review on hybrid and distance working.</p> <p>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.</p> <p>The review was published on 27 July 2022 and a findings report is due to be published in early 2023.</p>	<p>The Call for Evidence closes on 25 November 2022.</p> <p>The findings report is due by early 2023.</p>
7.	Diversity and inclusion resources for employers, and guidance on positive action	<p><b>Diversity &amp; Inclusion: New resources and guidance on positive action due by Spring 2023</b></p> <p>On 17 March 2022, in the <a href="#">Inclusive Britain report</a> 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.</p>	Spring 2023
8.	The Exclusivity Terms for Zero Hours Workers	<p><b>Extending the ban on exclusivity clauses in employment contracts to low-income workers</b></p> <p>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</p>	<a href="#">Draft regulations</a> were laid before Parliament

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	(Unenforceability and Redress) Regulations 2022	<p>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.</p> <p>Following a <a href="#">consultation</a> which closed in 2021, the Government <a href="#">announced</a> 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).</p> <p>The new legislation will also make available the rights to:</p> <ul style="list-style-type: none"> <li>• not to be unfairly dismissed;</li> <li>• not to be subjected to a detriment for failing to comply with an exclusivity clause; and</li> <li>• to claim compensation.</li> </ul> <p>The <a href="#">draft regulations</a> were laid before Parliament on 6 July 2022 and are pending approval. They will come into force 28 days after they are made.</p>	<p>on 6 July 2022 and are pending approval.</p> <p>The regulations will come into force 28 days after they are made.</p>
9.	TBC	<p><b>Ethnicity pay gap reporting: voluntary reporting guidance</b></p> <p>In the Government's response to the Commission on Race and Ethnic Disparities (see the <a href="#">Inclusive Britain report</a> 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.</p>	<p>Voluntary reporting guidance is expected by the end of Summer 2022.</p>
10.	<p><b>Employment Bill - and various Private Members' Bills</b></p> <p>There is currently no timeframe for the publication of the draft Employment Bill.</p> <p>However, the Government has indicated that it may</p>	<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 and promote fairness in the workplace. The main elements included:</p> <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;</li> </ol>	<p>There is currently no timeframe for the publication of the draft Employment Bill.</p> <p>However, during summer 2022, the Government confirmed its backing for two new Private Members Bills (and provisionally for one other) which would</p>

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	<p>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</p>	<p>5. Allowing parents to take extended leave for neonatal care;</p> <p>6. Introducing an entitlement to one week's leave for unpaid carers; and</p> <p>7. Subject to consultation, making flexible working the default unless employers have good reason not to.</p> <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 suggested 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>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 "<i>when the time is right</i>".</p> <p>In the meantime, the Government has recently confirmed its backing for two new Private Members Bills which seek to introduce measures previously contained in the Employment Bill, namely the <b>provision of neonatal care leave and pay</b> and the <b>allocation of gratuities, service charges and tips to go to staff in full</b>.</p> <p>It was also reported in June 2022 that the Government provisionally backs a Private Members Bill announced by Dan Jarvis MP which intends to <b>extend the period in which pregnant women and workers returning from parental leave are protected from redundancy</b>. While Private Members' Bill usually do not become law, with Government backing these may find their way onto the statute book.</p> <p>Other recently introduced Private Members Bills which are related to measures previously contained within the Employment Bill (but which do not have Government backing yet) include:</p> <ul style="list-style-type: none"> <li>• <b>Workers (Predictable Terms and Conditions) Bill:</b> to give workers and agency workers the right to request more predictable terms and conditions of work;</li> <li>• <b>Workers (Rights and Definition) Bill:</b> to make provision about workers' rights; to amend the definition of worker;</li> <li>• <b>Worker Protection (Amendment of Equality Act 2010) Bill:</b> to make provision in relation to the duties of employers and the protection of workers under the Equality Act 2010;</li> <li>• <b>Pensions (Extension of Automatic Enrolment) Bill:</b> to make provision about the extension of pensions automatic enrolment to jobholders under the age of 22 and make provision about the lower qualifying</li> </ul>	<p>introduce measures previously contained in the Employment Bill, namely:</p> <ul style="list-style-type: none"> <li>• the <b>provision of neonatal care leave and pay</b> (confirmed Government backing);</li> <li>• the <b>allocation of gratuities, service charges and tips to go to staff in full</b> (confirmed Government backing); and</li> <li>• <b>extending redundancy protections to prevent discrimination against women and new parents</b> (provisional Government backing).</li> </ul> <p>The consultation on flexible working closed on <b>1 December 2021</b> and the government's</p>

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		<p>earnings threshold for automatic enrolment;</p> <ul style="list-style-type: none"> <li>• <b>Health and Safety at Work Bill:</b> to amend the Enterprise and Regulatory Reform Act 2013 to make provision about civil liability for breaches of health and safety duties;</li> <li>• <b>Employment (Dismissal and Re-engagement) Bill:</b> to make provision for safeguards for workers against dismissal and re-engagement on inferior terms and conditions; and for connected purposes;</li> <li>• <b>Paternity (Leave and Pay) Bill:</b> to extend eligibility to paternity leave and pay; to make provision for more flexibility in the timing of, and notice period for, paternity leave;</li> <li>• <b>Fertility Treatment (Employment Rights) Bill:</b> to require employers to allow employees to take time off from work for appointments for fertility treatment;</li> <li>• <b>Miscarriage Leave Bill:</b> to make provision for paid leave for people who have experienced miscarriage;</li> <li>• <b>Carer's Leave Bill:</b> to make provision about unpaid leave for employees with caring responsibilities. <i>NB: On 19 July 2022, Lord True advised in a Parliamentary debate that the Government is considering whether to lend its support to this Bill;</i></li> <li>• <b>Public Sector Exit Payments (Limitation) Bill:</b> to limit exit payments made by some public sector organisations to employees; and</li> <li>• <b>Employment Relations (Flexible Working) Bill:</b> to make provision in relation to the right of employees and other workers to request variations to particular terms and conditions of employment, including working hours, times and locations.</li> </ul> <p>While Private Members' Bill usually do not become law, it will be interesting to see whether any of these other Private Members Bills will attract Government backing. Several have second readings scheduled for September and October 2022, so we will not have too long to wait to see.</p>	response is awaited.
11.	Legislation will be required	<p><b>Statutory Code of Practice on Fire and Rehire</b></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&amp;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 (<b>BEIS</b>), confirmed that:</p>	TBC

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		<ul style="list-style-type: none"> <li>• 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>;</li> <li>• 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;</li> <li>• that legislation to lay the code will be introduced "when parliamentary time allows".</li> </ul> <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>	
12.	Future of Work Review	<p><b>Future of Work Review: to focus on key issues and challenges for the labour market for the future</b></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. The Future of Work Review will be in 2 parts:</p> <ul style="list-style-type: none"> <li>• a high level assessment of key strategic issues on the future of work;</li> <li>• a more detailed assessment of selected areas of focus from the first phase.</li> </ul> <p>Potential issues for assessment, include but not limited to:</p> <ul style="list-style-type: none"> <li>• the importance of place and local labour markets in creating and facilitating access to jobs;</li> <li>• the role of automation and how quickly it happens;</li> <li>• 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.</li> </ul> <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.

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13.	EU 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 not obliged to implement the Directive, so it is unclear whether the UK will take steps to implement any aspects.</p>
14.	TBC	<p><b>Consultation on measures to ban or impose mandatory compensation for non-compete clauses</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> <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>The consultation closed on 26 February 2021 and the Government's response is awaited.</p>	<p>The consultation closed on 26 February 2021 and the Government's response is awaited.</p>
15.	The Judicial Review and Courts Act 2022	<p><b>Employment tribunals and EAT: new procedure rules</b></p> <p>Provisions within the Judicial Review and Courts Act 2022 (<b>JRCA</b>) will establish a new online procedure for civil proceedings and an Online Procedure Rule Committee (<b>OPRC</b>) that will be able to make new Online Procedure Rules (<b>OPR</b>) effective in courts and tribunals including the employment tribunals and the EAT.</p>	<p>Regulations will be required.</p>

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		<p>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.</p>	
16.	The Police, Crime, Sentencing and Courts Act 2022	<p><b>Rehabilitation of offenders</b></p> <p>Under section 193 of the Police, Crime, Sentencing and Courts Act 2022 (<b>PCSCA</b>) 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:</p> <p>(1) custodial sentences of up to one year become 'spent' after 12 months without re-offending;</p> <p>(2) convictions between one to four years become 'spent' after four crime-free years; and</p> <p>(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.</p> <p>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.</p>	Regulations will be required.
17.	TBC	<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 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.</p> <p>On 28 July 2022, House of Commons Women and Equalities Committee responded to that inquiry by publishing a <a href="#">report</a> 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.</p> <p>In the meantime:</p> <ul style="list-style-type: none"> <li>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</li> </ul>	TBC

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		<ul style="list-style-type: none"> <li>On 18 July 2022, the Department for Work and Pensions <a href="#">publication</a> 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.</li> </ul>	
18.	Bill of Rights 2022-2023 – no further progression	<p><b>New UK Bill of Rights (to replace the Human Rights Act 1998)</b></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. The consultation closed on 8 March 2022 and the Government responded on 12 July 2022 by introducing the <a href="#">Bill of Rights Bill</a> 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.</p> <p>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.</p>	None
19.	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 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".</p>	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	<p><b>Whistleblowing protection: Compensation and remedies</b></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.
2.	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: can an employer 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 has been heard in part with the rest of the hearing and judgment pending.</p>	Heard in part by the Court of Appeal on 20 July 2022 with the rest of the hearing and judgment pending.
3.	Benyatov v Credit Suisse Securities (Europe) Ltd	<p><b>Duty of care: consideration of employer's duty to protect employees from criminal conviction and duty to indemnify.</b></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.
4.	Chief Constable of the Police Service of Northern Ireland and another v Agnew and others	<p><b>Holiday Pay: Whether a series of deductions is broken by three-month gap</b></p> <p>Contrary to the EAT's decision in <i>Bear Scotland v Fulton</i>, 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.</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.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
5.	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. Permission to appeal to the Court of Appeal was granted on 8 August 2022 and the hearing is listed for 3 November 2022.</p>	Due to be heard in the Court of Appeal on 3 November 2022.
6.	Fentem v Outform EMEA Ltd	<p><b>Ending employment: what constitutes a dismissal?</b></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 on 31 January 2023 or 1 February 2023.
7.	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 Tribunal.
8.	Mhindurma v Lovingangels Care Ltd	<p><b>Covid-19: Should furlough have been used as an alternative to redundancy.</b></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.
9.	Ryanair DAC v Morais	<p><b>Trade Unions: are striking employees protected from detriment under TULRCA and the 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.</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</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>	<p><i>Mercer v Alternative Future Group Ltd</i>.</p>
10.	Mercer v Alternative Future Group Ltd	<p><b>Trade Unions: whether 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.</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>	<p>Permission to appeal to the Supreme Court has been sought – a decision is awaited.</p>
11.	Arvunescu v Quick Release Automotive Ltd	<p><b>Settlement: Whether a claim for aiding discrimination under s 112 EqA 2010 was caught by the terms of a COT3.</b></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 was granted on 4 July 2022. Awaiting hearing date.</p>	<p>Awaiting a hearing date in the Court of Appeal.</p>
12.	Jones v JP Morgan Securities plc	<p><b>Unfair dismissal: Re-engagement order made for trader unfairly dismissed for alleged involvement in spoofing</b></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>

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		Permission to appeal to the EAT has been sought. Awaiting sift by judge.	
13.	HMRC v Professional Game Match Officials Ltd	<p><b>Employment status: Are match referees employees?</b></p> <p>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.</p> <p>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.</p>	Permission to appeal to the Supreme Court has been granted. Awaiting a hearing date.
14.	R (on the application of Palmer) v Northern Derbyshire Magistrates' Court	<p><b>Collective redundancies: Can administrators be prosecuted personally for failing to notify Secretary of State of collective redundancies?</b></p> <p>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.</p>	Permission to appeal to the Supreme Court has been granted. Awaiting a hearing date.

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