

EMPLOYMENT AND IMMIGRATION HORIZON SCANNER



January 2023

FUTURE KEY LEGISLATION DEVELOPMENTS

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
1.	International Labour Organisation's Violence and Harassment Convention The Worker Protection (Amendment of Equality Act 2010) Bill	<p>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</p> <ol style="list-style-type: none"> On 7 March 2022, the UK ratified the International Labour Organisation's (ILO) Violence and Harassment Convention, the first international treaty to recognise everyone's right to a workplace free from violence and harassment, including gender-based violence and harassment. The Convention will come into force on 7 March 2023. 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 also said it would look closely at the possibility of extending time limits for claims under the Equality Act 2010 from three to six months. <p>The Government is now supporting The Worker Protection (Amendment of Equality Act 2010) Bill (a Private Members' Bill) which is being progressed through Parliament. Under this Bill, employers would have a proactive duty to take reasonable steps to prevent sexual harassment of employees in the course of their employment, although claimants would only be able to bring claims about the preventative duty once an incident has occurred and liability established. This is because the main remedy for breach of the preventative duty is an uplift of up to 25% of any compensation awarded for sexual harassment if the tribunal considers that the duty to take reasonable steps to prevent harassment has also been breached. The Equality and Human Rights Commission would also be able to take enforcement action for a breach or suspected breach of the duty.</p> <p>The Bill also proposes to re-introduce liability for third-party harassment, with employers liable if they failed to take reasonably practicable steps to prevent the harassment, even if it was the first occasion.</p> <p>The proposed duty to prevent sexual harassment applies only to sexual harassment, but the reinstatement of protection from third party harassment would relate to all protected characteristics. The Public Bill Committee has just recommended the Bill to the House of Commons and it is now due to have its report stage and third reading on Friday 3 February 2023.</p>	ILO Convention: 7 March 2023. Report stage and third reading of The Worker Protection (Amendment of Equality Act 2010) Bill: 3 February 2023.
2.	Consultation on Holiday entitlement for part-year and	<p>Holiday Entitlement: Government consultation on holiday entitlement for part-year and irregular hours workers</p> <p>On 12 January 2023 the Government launched a consultation over a proposal to make holiday entitlement under the Working Time Regulations 1998 proportionate to time worked. This consultation comes in the wake of the</p>	The consultation closes on 9 March 2023.

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	irregular hours workers	<p>Supreme Court's decision in Harpur Trust v Brazel [2022] which held that workers on permanent contracts who only work for part of the year are entitled to 5.6 weeks' paid holiday per year, just like workers who work all year.</p> <p>The Government proposes to introduce a 52 week holiday entitlement reference period for part-year workers and workers with irregular hours, based on the proportion of time spent working over the previous 52 week period (including weeks in which no work was done). Holiday entitlement would be calculated in hours at the start of a leave year, as 12.07% of the hours worked in the previous 52 weeks, with an accrual system applying for the first year of employment. For workers on irregular hours, it proposes that a day's holiday should be based on a "flat average day", calculated as the average length of working day for that worker over the 52-week reference period used to calculate annual leave entitlement.</p> <p>The consultation closes on 9 March 2023.</p>	
3.	Regulations will be required	<p>Increase in National Living Wage (NLW) and National Minimum Wage (NMW)</p> <p>From 1 April 2023 the NLW for those over 23 will rise from £9.50 to £10.42 per hour.</p> <p>NMW rates will also rise:</p> <ul style="list-style-type: none"> • from £9.18 to £10.18 for those aged 21-22, • from £6.83 to £7.49 for those aged 18-20, • from £4.81 to £5.28 for under 18s; and • from £4.81 to £5.28 for Apprentices. <p>The 9.7% increase in the NLW up to £10.42/hour for those aged over 23 in April 2023 is expected to benefit over 2 million low-paid workers and will amount to over £1,600 for a full time NLW worker. Employers will face higher wages bills, most likely including the knock-on effect of higher wages for more senior employees to maintain an appropriate pay differential. The increase will also bring more workers closer to the NLW / NMW limits. Employers will need to be alive to the common risk areas that create NLW / NMW underpayment, especially within the context of different job roles or sections of the workforce than were perhaps previously in scope of the NLW / NMW legislation.</p>	1 April 2023.
4.	Regulations will be required	<p>Increases to statutory maternity, paternity, adoption and sick pay</p> <p>The Department for Work and Pensions has published its proposed increases to several statutory benefit payments. The following rates will apply from April 2023:</p> <ul style="list-style-type: none"> • The weekly rate of statutory sick pay (SSP) will be £109.40 (up from £99.35) 	10 April 2023.

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		<ul style="list-style-type: none"> The weekly rate of statutory maternity pay (SMP) and maternity allowance will be £172.48 (up from £156.66) The weekly rate of statutory paternity pay (SPP) will be £172.48 (up from £156.66) The weekly rate of statutory shared parental pay (ShPP) will be £172.48 (up from £156.66) The weekly rate of statutory adoption pay (SAP) will be £172.48 (up from £156.66) The weekly rate of statutory parental bereavement pay (SPBP) will be £172.48 (up from £156.66) <p>The rates which represent a 10.1% increase on the rates for 2022/23 are due to come into effect on 10 April 2023.</p>	
5.	Diversity and inclusion resources for employers, and guidance on positive action	<p>Diversity & Inclusion: New resources and guidance on positive action due by Spring 2023</p> <p>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.</p>	Spring 2023.
7.	The Retained EU Law (Revocation and Reform) Bill 2022	<p>Sunset on Retained EU Law: The Retained EU Law (Revocation and Reform) Bill</p> <p>After 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".</p> <p>The Government is now 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. The Government's press release 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."</p> <ul style="list-style-type: none"> 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. 	31 December 2023.

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		<ul style="list-style-type: none"> • Any retained EU law remaining 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. <p>The Bill is far reaching and has huge implications for employment law in the UK. 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. 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.</p> <p>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 Bill has had its First and Second Readings in the House of Commons and is now at Committee Stage. The House of Commons has published this research briefing about the Bill. Since then:</p> <ul style="list-style-type: none"> • On 21 November 2022, the Regulatory Policy Committee published its opinion on the Government's regulatory impact assessment for the Bill and red-rated the impact assessment as 'not fit for purpose'. • On 24 November 2022, the Employment Lawyers Association, the Institute of Directors, and various other organisations including the Chartered Institute of Personnel and Development, issued a letter to the Business Secretary, Grant Shapps, calling for the Bill to be withdrawn. The letter states the Bill could cause significant confusion and disruption for businesses, working people and environmental groups due to the sunset of thousands of pieces of retained EU legislation. The organisations add that 'decades' of case law would be impacted, the interpretation of the law would become uncertain, and that the UK also risks being in breach of the Trade and Co-operation Agreement with the EU. • On 15 December 2022, the Government published its regulatory impact assessment for the Bill. 	

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		<ul style="list-style-type: none"> On 9 January 2023 the House of Commons Library published its paper summarising the main developments in relation to the Bill. 	
8.	TBC	<p>Ethnicity pay gap reporting: voluntary reporting guidance</p> <p>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 (still awaited).</p>	TBC: Voluntary reporting guidance had been expected by the end of Summer 2022.
9.	Strikes (Minimum Service Levels) Bill	<p>Strikes (Minimum Service Levels) Bill: to provide minimum service levels for key sectors</p> <p>On 10 January 2023, the Government published the Strikes (Minimum Service Levels) Bill which replaces the Transport Strikes (Minimum Service Levels) Bill previously published in October 2022. The Bill will enforce minimum service levels in a number of sectors including health, education, fire and rescue and transport services as well as border security and decommissioning nuclear installations and management of radioactive waste and spent fuel.</p> <p>The new Bill is less complex than the Transport Strikes Bill and has done away with minimum service agreements negotiated between employer and unions or determinations to be made by the Central Arbitration Committee. Instead, it will provide for minimum service levels to be set by the Government following consultation and the Government intends to consult first with fire, ambulance and rail services. It hopes not to have to use the powers for other sectors, rather it expects parties in those sectors to reach a voluntary agreement on minimum service levels during strike action.</p> <p>When a union gives an employer notice of a strike in relation to a service where minimum service levels are set, the employer may give a "work notice" to the union. The notice will identify the people required to work during the strike to ensure that minimum levels of service are provided and specify the work they will be required to carry out during the strike. If the union fails to take reasonable steps to ensure that the people identified in the notice do not take part in the strike, the union will lose its protection from an action in tort by the employer.</p>	TBC.

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		<p>There has been much opposition to the Bill from unions and Labour has said it will repeal the legislation if it wins the next election. The new Bill was published on 10 January 2023 and has just had its second reading in the House of Commons.</p>	
10.	<p>The UK's bonus cap rules will need to be varied or revoked</p>	<p>Removal of the cap on bankers' bonuses</p> <p>On 23 September 2022, the former Chancellor, Kwasi Kwarteng, announced the removal of the current cap to bankers' bonuses, which was subsequently published in The Growth Plan 2022. Currently, the bonus cap limits remuneration of certain bank staff to 100% of their fixed pay (or 200% with shareholder approval). 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.</p> <p>The UK's bonus cap rules (that implement the Capital Requirements Directive (CRD)) are in the <i>Remuneration and Remuneration Code</i> 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.</p> <p>On 19 December 2022, the PRA and the FCA jointly published a consultation paper setting out their proposed rule changes to remove the existing limits on the bonus cap. They explain that the bonus cap does not limit total remuneration, but limits the proportion of remuneration that can be adjusted by risk and performance measures. The proposed changes are designed to strengthen the effectiveness of the remuneration regime by increasing the proportion of compensation that can be subject to the incentive setting tools within the framework. The consultation closes on 31 March 2023.</p>	<p>TBC. The joint PRA and FCA consultation regarding removal of the cap closes on 31 March 2023.</p>
11.	<p>Various Private Members' Bills (there is no longer an Employment Bill "on the cards per se") – see <i>Summary and Impacts</i>. Instead, the Government is now sponsoring five Private Members Bills containing proposals on the same lines as those</p>	<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 and promote fairness in the workplace. The main elements included:</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; 5. Allowing parents to take extended leave for neonatal care; 	<p>Between June and November 2022, the Government confirmed its backing for five new Private Members Bills which would introduce measures previously contained in the Employment Bill as follows:</p> <ul style="list-style-type: none"> • the provision of neonatal care leave and pay; • the allocation of gratuities, service

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	contained within the Employment Bill	<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>However, the Employment Bill was not mentioned in the Queen's Speech on 11 May 2021 nor on 10 May 2022. It had been reported that it will be introduced "<i>when the time is right</i>". However, between June and November 2022, the Government confirmed its backing for several Private Members Bills including the provision of neonatal care leave and pay, the allocation of gratuities, service charges and tips to go to staff in full, the Protection from Redundancy (Pregnancy and Family Leave) Bill, the Carer's Leave Bill and the Employment Relations (Flexible Working) Bill. While Private Members' Bill usually do not become law, with Government backing, it is likely that these Bills may find their way onto the statute book.</p> <p>On 20 December 2022, the Government confirmed that it is <u>not</u> currently progressing plans for a single enforcement body to enforce workers' rights including holiday pay, statutory sick pay and labour exploitation. Although there may be time to address the issue in the remaining two years of Parliament, for the time being the Government is focussing on ensuring that the existing enforcement bodies operate as efficiently as possible. The proposal for a single enforcement body had been to consolidate three existing labour market enforcement bodies (HMRC's National Minimum Wage Enforcement, Employment Agency Standards Inspectorate and the Gangmasters Labour Abuse Authority).</p>	<p>charges and tips to go to staff in full;</p> <ul style="list-style-type: none"> • amending the flexible working application process; • extending redundancy protections to prevent discrimination against women and new parents; and • introducing an entitlement to one week's leave for unpaid carers.
12.	<p>Right to request flexible working (regulations will be required)</p> <p>Other measures will be legislated for in the Employment Relations (Flexible Working) Bill</p>	<p>Changes to the Right to Request Flexible Working Legislation</p> <p>On 5 December 2022, the Government announced its intention to introduce changes to the right to request flexible working legislation in response to the last year's consultation which closed in December 2021. The Government will take forward the following measures:</p> <ul style="list-style-type: none"> • Making the right to request flexible working a day 1 right, removing the current 26 week qualifying period. • Where it cannot accommodate a request to work flexibly, introducing a new requirement for employers to consult with the employee to explore alternative options before rejecting their flexible working request. • Allowing 2 statutory requests in any 12-month period (rather than the current one). • Requiring employers to respond to a request within 2 months (rather than the current three). • Removing the existing requirement that the employee must explain what effect, if any, the change applied for would have on the employer and how that effect might be dealt with. <p>The Government will retain the current list of business reasons for rejecting flexible working requests without any changes.</p>	

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		<p>The day one right to request flexible working will be introduced through secondary legislation "when parliamentary time allows". The other measures require primary legislation and are contained in The Employment Relations (Flexible Working) Bill, a Private Member's Bill, which is currently progressing through Parliament and has Government backing.</p> <p>The Government has also committed to non-legislative action, including:</p> <ul style="list-style-type: none"> • developing guidance to raise awareness and understanding of how to make and administer temporary requests for flexible working; and • launching a call for evidence to better understand how informal flexible working operates in practice. 	
13.	Carer's Leave Bill	<p>Carer's Leave Bill</p> <p>The Government has announced its backing for the Carer's Leave Bill, a Private Members' Bill currently making its way through Parliament. The Bill will introduce a new statutory right of at least one week's unpaid leave for unpaid carers per year. It will be a day one right with employees able to take leave to provide or arrange for care of an immediate family member, someone in their household or who reasonably relies on them for care with a defined long-term care need. The 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. Regulations will be needed which will set out the exact amount of leave which an eligible employee can take, but it looks likely to be one week.</p> <p>The report stage and third reading is scheduled to take place on 3 February 2023.</p>	The report stage and third reading is due to take place on 3 February 2023.
14.	Protection from Redundancy (Pregnancy and Family Leave) Bill	<p>Protection from Redundancy (Pregnancy and Family Leave) Bill</p> <p>The Government is backing the Protection from Redundancy (Pregnancy and Family Leave) Bill, a Private Members' Bill currently making its way through Parliament. The Bill provides that expectant mothers will receive greater protection from redundancy during pregnancy and new parents will have extended protections when they return from maternity, adoption and shared parental leave. The Bill proposes to extend the period of protection from redundancy from the moment they inform their employer of their pregnancy until 18 months after the birth. Parents taking adoption or shared parental leave will also be protected while on leave and for a period of 18 months after the birth.</p> <p>The report stage and third reading is scheduled to take place on 3 February 2023.</p>	The report stage and third reading is due to take place on 3 February 2023.

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15.	Neonatal Care (Leave and Pay) Bill	<p>Neonatal Care (Leave and Pay) Bill</p> <p>The Government has announced it is backing the Neonatal Care (Leave and Pay) Bill, a Private Members' Bill. The Bill will allow parents each to take up to 12 weeks of paid leave, in addition to other leave entitlements such as maternity and paternity leave, so that they can spend more time with their baby who is receiving neonatal care (having been born prematurely or sick) in a hospital or other agreed care setting. It will be a day one right for employees and will apply to parents of babies admitted to hospital up to the age of 28 days and who have a continuous stay in hospital of seven full days or more.</p> <p>The report stage and third reading is scheduled to take place on 20 January 2023.</p>	The report stage and third reading is due to take place on 20 January 2023.
16.	Employment (Allocation of Tips) Bill	<p>The Employment (Allocation of Tips) Bill</p> <p>The Employment (Allocation of Tips) Bill is another Private Members' Bill which has Government backing. It provides a requirement that employers pass all tips to staff in full without deductions, save for those required by tax law. Employers will also be required to have a written policy on tips and to distribute them in a fair, transparent and consistent way and to keep records of how tips have been dealt with for three years from the date received.</p> <p>The report stage and third reading of the Bill will be considered on 20 January 2023.</p>	The report stage and third reading will be considered on 20 January 2023.
17.	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 	TBC.

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		<p>unreasonably failed to follow it;</p> <ul style="list-style-type: none"> 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> <p>On 3 November 2022, in a parliamentary debate in the House of Lords, Lord Callanan, Parliamentary Under-Secretary of State for BEIS, provided an update on the timeframe for publication of the draft Statutory Code of Practice. When pressed, Lord Callanan would not commit to a precise timescale but stated that the intention is to bring it forward in the "near future".</p>	
18.	Bill of Rights 2022-2023	<p>New UK Bill of Rights (to replace 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. The consultation closed on 8 March 2022 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.</p> <p>On 7 September 2022, it was reported that the Bill of Rights Bill 2022-23 had been dropped by the new Government headed by Liz Truss and would not progress to its second reading, which had been scheduled to take place on 12 September 2022. However, on 7 November 2022, it was reported that the Bill of Rights Bill 2022-23 will resume its passage through Parliament "within weeks". It is understood to have been reinstated under the Government headed by the new Prime Minister, Rishi Sunak. A date for the second reading in the House of Commons is yet to be announced.</p>	A date for second reading in the House of Commons is yet to be announced.
19.	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. The Future of Work Review will be in 2 parts:</p>	a) Phase 1 completed on 31 August 2022. No timetable yet for Phase 2

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		<p>1. The first phase - a high level assessment of key strategic issues on the future of work - is now complete (see Matt Warman MP's Response here). The Government will now look into 4 key areas:</p> <ul style="list-style-type: none"> a) AI and automation: Considering what more can be done to (i) promote the UK to continue to be a world leader in AI and (ii) map and support areas more susceptible to the pace of change. b) Skills: Supporting initiatives to enable a more agile approach to the approval and delivery of training. c) Place and flexibility: Considering the rights of those who wish to work flexibly and develop a better understanding of what it means for different groups within the workforce. d) Workers' Rights: Encouraging transparency on what business now expect from their workers and when, and working to establish best practice and set clear expectations. <p>2. There is no indication yet of when phase 2, a more detailed assessment of selected areas of focus from the first phase, will be delivered.</p>	
20.	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. Broadly, two measures to reform post-termination non-compete clauses in contracts of employment were proposed:</p> <ul style="list-style-type: none"> (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) <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.
21.	The Judicial Review and Courts Act 2022	<p>Employment tribunals and EAT: new procedure rules</p> <p>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.</p>	Regulations will be required. The transfer of responsibility for rules of procedure in the employment tribunals and the EAT from BEIS to the TPCs is

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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> <p>One of the provisions of the JRCA is that it transfers responsibility for the rules of procedure in the employment tribunals and the EAT from BEIS to the Tribunal Procedure Committee (TPC) which is anticipated to commence in January or February 2023.</p>	<p>anticipated to commence in January or February 2023.</p>
22.	The Police, Crime, Sentencing and Courts Act 2022	<p>Rehabilitation of offenders</p> <p>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:</p> <ol style="list-style-type: none"> 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. <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>	<p>Regulations will be required.</p>
23.	TBC	<p>Menopause discrimination in the workplace</p> <p>In July 2021 the House of Commons Women and Equalities Committee (WEC) launched an inquiry seeking views on the extent of discrimination faced by menopausal people in the workplace and how Government policy and workplace practices can better support those experiencing the menopause.</p> <p>On 28 July 2022, the WEC published a report, advocating that employers' lack of support for menopausal symptoms is pushing "highly skilled and experienced" women out of work, with impacts on the gender pay gap, the pension gap and female representation in senior leadership positions. The report asks the Government to:</p> <ul style="list-style-type: none"> • amend the Equality Act 2010 (EqA 2010) to introduce menopause as a protected characteristic, and • include a duty for employers to provide reasonable adjustments for menopausal employees. <p>However, these calls for legislative reform are unlikely to be taken forward after the Government confirmed in a letter to Caroline Nokes MP in May 2022 that it does not intend to amend the EqA 2010 to add the menopause</p>	

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		<p>as a protected characteristic and that it has no plans to implement the combined discrimination provision in section 14 of the EqA 2010, as this would introduce further complexity and costs for employers.</p> <p>Additionally:</p> <ul style="list-style-type: none"> On 3 February 2022, the Government launched a UK Menopause Taskforce to look at tackling issues surrounding the menopause. The taskforce will meet every 2 months for an initial period of 18 months, with future meetings scheduled by theme, including healthcare provisions, education and awareness, menopause in the workplace and research evidence and data; and On 18 July 2022, the Government responded to recommendations from a commissioned independent report through the 50PLUS Roundtable on Menopause and the Workplace published in November 2021, confirming an intention to introduce change in relation to menopause support in key areas of Government policy, employer practice, and wider societal and financial change. On 12 October 2022, the All-Party Parliamentary Group on Menopause published a report on the impacts of menopause and the case for policy reform. The report recommends that the government must: (1) Co-ordinate and support an employer-led campaign to raise awareness of menopause in the workplace and to help tackle the taboo surrounding menopause and work; and (2) Update and promote guidance for employers on "best practice" menopause at work policies and supporting interventions. This should be tailored to organisations of different sizes and resources to ensure it is as effective as possible and include the economic justification and productivity benefits of such interventions. 	
24.	Fertility Treatment (Employment Rights) Bill 2022-2023	<p>Fertility in the workplace</p> <p>A Private Members' Bill to require employers to allow employees to take time off from work for appointments for fertility treatment. The first reading took place in the House of Commons on 20 June 2022. The second reading started on 25 November 2022 but was interrupted and is scheduled to resume on 20 January 2023.</p>	Second reading in the House of Commons resumed on 20 January 2023.
25.	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 committed to consult on voluntary and mandatory reporting of disability in the workforce by large employers. The consultation ran until 25 March 2022 seeking views on how employers with more than 250 employees might be encouraged to collect and report statistics about disability to make their workforces more inclusive and exploring how Government</p>	The consultation closed on 25 March 2022. The Government's response is awaited – but is not expected imminently.

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		<p>and employers can make workplaces more inclusive for disabled people and increase transparency.</p> <p>The consultation closed on 25 March 2022. The Government's response was expected in the summer of 2022, but is reported as "not imminent". In January 2022, the High Court ruled that the strategy is unlawful, based on a case brought by four disabled people regarding the consultation process (see <i>Future Key Cases</i> below). The case is due to be heard by the Court of Appeal by 22 May 2023. In June 2022, the Government announced that parts of the strategy will be paused while the legal case is pursued.</p>	

FUTURE KEY CASES

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
1.	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.</p> <p>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.	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. The appeal was part-heard by the Court of Appeal on 11-13 October 2022.</p>	Part-heard by the Court of Appeal on 11 – 13 October 2022.
3.	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>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. Heard by the Supreme Court on 14 and 15 December 2022.</p>	Heard by the Supreme Court on 14 and 15 December 2022. Awaiting judgment.
4.	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.</p> <p>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.
5.	Accattatis v Fortuna Group (London) Ltd	<p>Covid-19: Did Covid-19 concerns justify a refusal to attend work?</p> <p>The tribunal held that Covid-19 concerns alone may not justify a refusal to attend work under s.100(1)(e) of the Employment Rights Act 1996 if the employers have reasonably tried to accommodate the employees' concerns and reduce transmission risk.</p>	Permission to appeal to the EAT has been sought. Rule 3(10) hearing is due to be

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		Permission to appeal to the EAT has been sought. Rule 3(10) hearing is due to be heard by the EAT on 9 February 2023.	heard by the EAT on 9 February 2023.
6.	Associated Unions v Secretary of State for Business, Energy and Industrial Strategy	<p>Judicial Review of the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022</p> <p>The High Court has granted permission for a judicial review of the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022 which allow agency workers to fill in for striking workers. The TUC, along with 11 trade unions, as well as Unison and NASUWT have issued proceedings in the High Court seeking a judicial review of the Government's new regulations which they say "undermine the right to strike". The judicial review is being sought on the basis that the then Secretary of State failed to consult unions, with the unions critical of ministers for using what they say is out of date findings from a 2015 consultation and also on the basis that the new measures are contrary to Article 11 of the European Convention on Human Rights, namely the right to freedom of association. The case is due to be heard in March 2023.</p>	The High Court has granted permission for a judicial review of the regulations and is due to be heard in March 2023.
7.	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>	Due to be heard in the EAT on 20 April 2023.
8.	R (Binder and others) v Secretary of State for Work and Pensions	<p>National Disability Strategy unlawful due to inadequate consultation</p> <p>The High Court has declared that the National Disability Strategy is unlawful due to inadequate consultation. The court found that the Secretary of State had chosen to consult about the strategy and therefore common law consultation duties applied. The UK disability survey, which was open to the public between January and April 2021 and through which the views of disabled people were purportedly sought, did not comply with these duties. In particular, the survey did not allow for intelligent consideration and response to the consultation. The case is due to be heard by the Court of Appeal by 22 May 2023.</p>	The case is due to be heard by the Court of Appeal by 22 May 2023.
9.	HMRC v Professional Game Match Officials Ltd	<p>Employment status: Are match referees employees?</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>	Due to be heard in the Supreme Court on 26-27 June 2023.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		<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>	
10.	Kocur v Angard Staffing Solutions Ltd and anor	<p>Agency Workers: Can agency workers be employed on the same terms as directly recruited employees?</p> <p>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.</p>	Due to be heard in the Supreme Court on 7 December 2023.
11.	Clark and Others v Sainsburys Supermarkets Ltd and another	<p>Tribunal Practice and Procedure – early conciliation number on multiple claim form</p> <p>The EAT held that an employment tribunal erred in law in rejecting the claims of prospective claimants whose names did not appear on the Early Conciliation Certificate whose number was quoted on the claim form, although their names did all appear on other EC certificates. It was sufficient in a multi-claimant claim for the claim form to contain, for each respondent, an EC number of an EC Certificate on which the name of one of the prospective claimants appeared. Permission to appeal to the Court of Appeal was allowed on 3 November 2022. The case is due to be heard by 12 January 2024.</p>	Permission to appeal to the Court of Appeal was allowed on 3 November 2022. The case is due to be heard by 12 January 2024.
12.	Manjang v Uber Eats UK Ltd & Ors, 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 and App Drivers or Couriers Union.</p> <p>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.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
13.	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>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>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>
14.	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>	<p>Supreme Court granted permission to appeal in November 2022. Awaiting a hearing date.</p>
15.	R (on the application of Palmer) v Northern Derbyshire Magistrates' Court	<p>Collective redundancies: Can administrators be prosecuted personally for failing to notify Secretary of State of collective redundancies?</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</p>	<p>Permission to appeal to the Supreme Court was granted on 12 August 2022. The case is due to be heard on 8 March 2023.</p>

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		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. The case is due to be heard in the Supreme Court on 8 March 2023.	
16.	USDAW v Tesco Stores Ltd	<p>Employment Contracts: Implying contractual terms.</p> <p>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.</p> <p>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. It is reported that permission to appeal to the Supreme Court has been granted.</p>	It is reported that permission to appeal to the Supreme Court has been granted.
17.	Hope v British Medical Association	<p>Unfair dismissal: was dismissal for bringing numerous grievances which the claimant refused to progress or withdraw fair?</p> <p>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.</p>	Court of Appeal hearing for 2 February 2023 vacated. A new hearing date is awaited.
18.	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>The EAT held that the claimant's belief that a person cannot change their sex/gender at will was capable of protection as a religious or philosophical belief under the Equality Act 2010 (EqA). However, the EAT found that it wasn't discriminatory for the Department of Work and Pensions to require the claimant to refer to transgender service users by their preferred pronoun in order to</p>	Permission to appeal to the Court of Appeal has been sought.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		work for them as a health and disabilities assessor. The claimant is seeking permission to appeal to the Court of Appeal and a decision is awaited.	
19.	Bailey v (1) Stonewall Equality Ltd (2) Garden Court Service Company (3) representatives of Garden Court Chambers	<p>Religion and belief: did a barristers' chambers discriminate against a barrister due to her 'gender critical' philosophical beliefs and did the organisation Stonewall instruct, cause or induce that discrimination?</p> <p>An employment tribunal held that Garden Court Chambers had discriminated against a barrister for holding 'gender critical' beliefs and for expressing misgivings about Stonewall's policy aims, but rejected the claimant's claim against Stonewall for instructing, causing or inducing that discrimination. The employment tribunal found that the communications from Stonewall relating to the claimant were just a protest and not sufficient to amount to an inducement, or attempted inducement, of any particular course of action by Garden Court. The claimant has appealed to the EAT as to whether the ET was correct to reject claims that Stonewall had instructed, caused or induced discrimination by Garden Court (or attempted to do so), under section 111 of EqA 2010.</p>	Permission to appeal lodged at the EAT on 22 September 2022. Awaiting sift by a judge.
20.	Kong v Gulf International Bank (UK) Ltd	<p>Whistleblowing—the separability of a disclosure from the employee's conduct</p> <p>The Court of Appeal upheld the EAT's finding that it was open to the employment tribunal, when deciding that the principal reason for dismissal was not the protected disclosures, to distinguish between the claimant's conduct in making the protected disclosures and the disclosures themselves. The tribunal had fully understood the issue of separability between the claimant's conduct, which was the principal reason for dismissal, and her protected disclosures. The claimant has appealed to the Supreme Court and is awaiting a decision on the papers.</p>	Permission to appeal to the Supreme Court is currently being sought.
21.	Independent Workers Union of Great Britain v Central Arbitration Committee and another	<p>Employment status and trade union freedom right under Article 11 ECHR</p> <p>The Court of Appeal held that Deliveroo riders do not fall within the scope of the trade union freedom right under Article 11 of the European Convention on Human Rights (ECHR) because there is no employment relationship between them and Deliveroo.</p> <p>Article 11 of the ECHR concerns the freedom of assembly and association including the right to form and to join trade unions for the protection of one's interests. A trade union may apply to the Central Arbitration Committee (CAC) for statutory recognition in respect of a group of workers for union entitlement to conduct collective bargaining with the employer on pay, hours and holidays on behalf of the workers.</p> <p>The Court of Appeal held that the CAC was entitled to conclude that the Deliveroo riders were not in an employment relationship with Deliveroo for the purpose of Article 11, given the CAC's finding</p>	Permission to appeal to the Supreme Court was granted on 15 July 2022. Case due to be heard in the Supreme Court on 25 and 26 April 2023.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		<p>that riders were under no obligation to provide services personally and had a virtually unlimited right of substitution. Permission to appeal to the Supreme Court was granted on 15 July 2022 and the case is due to be heard by the Supreme Court on 25 and 26 April 2023.</p>	

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