CP Associates

HR EMPLOYMENT BULLETIN
September 2024

KEY EMPLOYMENT LAW CHANGES AND ADVICE

This is the latest in the series of HR Employment Bulletins which summarise some expected key employment law changes and a number of interesting Tribunal case outcomes for you to consider.

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1. Excluded office worker discriminated against due to maternity leave

A Tribunal has ruled that an office worker who was excluded from a company-wide 'free day off' then not sent job adverts while on maternity leave was discriminated against. The office worker was awarded £50,000 by an Employment Tribunal after she was excluded from a 'free day off' and her employer failed to send her job adverts while she was on maternity leave.

The Cambridge Tribunal heard that Greatwell Homes Limited had failed to keep Ms S informed of opportunities for career progression, even though she had been encouraged to apply for promotions before she informed them she was pregnant. The Tribunal ruled that Ms S's reputation in the firm as a "an effective and useful member of staff" had been "eroded by the knowledge that she had become pregnant and was on maternity leave" and despite the firm accepting it had not complied with its own maternity policy in not informing of her any job vacancies, it "sought to point the finger at the claimant" and did not "appear to accept any fault".

Ms S began working at Greatwell Homes in March 2019 as a Business Improvement Analyst within the Business Improvement Team. The Tribunal heard she was a valuable and ambitious member of staff, and noted that she was a "credible and consistent witness".

Within her team there were three members of staff, herself, a Business Improvement Manager and a Head of Business Intelligence. However, the person occupying the post of Business Improvement Manager – the person who was meant to be Ms S's line manager – had been absent due to long-term ill health. She never returned to work and subsequently resigned. Consequently, Ms S was required to take on a "significant proportion" of the responsibilities that should have been her manager's.

The firm's Head of Property Services and compliance, Miss H, viewed Ms S as a valuable member of the team and encouraged her to apply for a more senior post with line management responsibilities should one become available.

In April, Ms S informed Miss H that she was pregnant. The Tribunal found the news was not effectively communicated to the Human Resources Team by Miss H and Ms S was required to confirm herself with HR that she was expecting a baby on two further occasions. The Tribunal found that this was symptomatic of the respondent's attitude towards the claimant and/or to the fact she was pregnant.

Ms S's first claim arose during the same month. All staff were given a free day off by the Company as a thank you for their efforts during the Covid pandemic. The day off was a Friday, however, when Ms S mentioned that she did not work Fridays, the firm refused to allow her to take a different day off.

In September, Ms S went on maternity leave. Other than a few emails from HR about pension matters and some personal messages from Miss H, Ms S did not hear from her employer during her maternity leave.

Then in the following April, Ms S received a text message from Miss H in which she was informed that someone had been appointed as her new Manager and the firm had also hired a Governance and Assurance Manager, which was only published internally on the Company intranet. These were both roles, the Tribunal ruled, that would have been opportunities for Ms S to progress within the Company.

The claimant was not happy about the text and what she perceived to be a lack of communication from the Company during her maternity leave, which went against their maternity policy - which stated that employees on maternity leave must be informed of job vacancies.

Ms S commenced a grievance which was heard by Mr W, but it was not upheld. In August, the respondent began to send job adverts to Ms S. This included a re-advertisement of the Governance and Assurance Manager's post, as the current person occupying the role was on a 12-month contract which would end in the following April.

The claimant resigned by letter in August and by a letter of the same day, the respondent accepted her resignation.

The Tribunal noted that neither Ms H nor Mr W were impressive witnesses, and ruled that Ms S was treated less favourably by the respondent on the grounds that she was on maternity leave and noted that "Neither demonstrated sufficient knowledge, skills or empathy in the way they dealt with the claimant throughout this process". It was the Tribunal's view that both were ill-equipped to deal with equality and diversity issues. It is incumbent on an employer to make sure that appropriately skilled and experienced staff deal with equality and diversity issues. The Company had singularly failed in this regard.

Regarding the free day off, the Tribunal said the firm's decision to not allow her to reschedule a day off was "unfavourable towards part-time workers, and therefore indirectly discriminatory towards female members of staff, as well as deeply unsympathetic in relation to the claimant herself".

It also ruled that Ms S "clearly had less favourable treatment" because she was on maternity leave as she was "barred from the opportunity" of participating in any recruitment process, or the chance to compete with other applicants to progress her career. The Employment Judge stated that "In our view, it is clear that Miss H's view of Ms S as an effective and useful member of staff had been eroded by the knowledge that she had become pregnant and was on maternity leave. It may have been, in part, a subconscious attitude. Nonetheless, we are clear that it was the reason, or a significant part of the reason, for the unfavourable treatment."

It also said the firm's decision to send Ms S job ads in August for vacancies that were expected to become available in the following April were just "window dressing" to disguise the treatment that had gone before. Greatwell Homes was ordered to pay Ms S compensation of £50,000.

It is clear from the above that employers must accept that employees have the right to not be treated less favourably during maternity leave or because they are part-time workers and this case clearly demonstrates the importance for employers to comply with this requirement and the significant consequences they may face if not.

As well as the substantial compensation payable, there is also the potentially damaging publicity surrounding cases such as these which can affect the wider business. Increasingly, employees are aware of an employer's commitment to equality, diversity and inclusion, and complying with maternity leave obligations is essential to demonstrate this.

2. Disability discrimination claim win for employee with menopause symptoms

It is timely to highlight the recent case of Ms L vs Direct Line when Ms L won her claim for disability discrimination when her employer failed to adjust its performance management system.

Ms L joined Direct Line in 2016 and was rated as a good performer. In 2019, she began experiencing menopausal symptoms, which affected her concentration and performance. This coincided with the introduction of a new performance management system.

Due to her continuing menopausal symptoms, she was prescribed anti-depressants, and whilst still suffering, it was noticed that her performance began to decline. She was open with her employer about her health and the difficulties it led to and she received support and coaching to help her. However, the issues continued, which resulted in an incident where her behaviour with a customer was unacceptable.

Ms L was signed off work for two weeks for work-related stress. While she was off, Direct Line offered her a different role, which they believed would be less stressful. She accepted the new role and initially settled in well. However, over time, concerns arose about her efficiency. She was set an action plan to improve her performance by the end of that year, but her performance did not improve.

In her end-of-year review, she was rated as "requires improvement" and did not qualify for a pay rise. She received coaching and a six-day refresher training course. However, by the following April, her performance remained unsatisfactory, and Direct Line commenced disciplinary action against her.

Ms L explained that the problems with her performance were due to her menopausal symptoms, but she was still issued with a first written warning and given a "success plan." She began a further spell of stress-related absence, but this time the GP noted it was home-related.

Direct Line sought medical advice from Occupational Health, who recommended a phased return to work, further training, and removing targets from her role while her menopausal symptoms improved. Occupational Health also noted that in their medical opinion, her health was likely to be a disability for the purpose of the Equality Act 2010.

While Ms L was off sick, Direct Line made the decision to end her discretionary sick pay, even though she had not exhausted the possible amount that could be paid.

Direct Line felt that she was not doing enough to support her return to work.

Ms L raised a grievance and was successful in receiving 13 weeks of discretionary sick pay that had been withdrawn. However, she went on to resign, claiming constructive dismissal and discrimination on the grounds of disability, age and sex.

Ms L claimed that she had been treated unfavourably because of her menopausal symptoms, which amounted to a disability under the Equality Act. She also claimed that she had been constructively dismissed and had been subjected to sex, age and disability discrimination and harassment. The Tribunal found that her health issues relating to the menopause amounted to a disability for the purpose of the Equality Act 2010 and found that Direct Line had treated her unfavourably because of it. It also found that she had been constructively dismissed. However, it did not find that she had been subjected to sex or age discrimination or harassment.

Regarding the disability discrimination claim, the Tribunal found that Direct Line had treated Ms L unfavourably by:-

- giving her a performance rating of “requires improvement” when she was doing all that she could to achieve within the limitations caused by her menopausal symptoms and the Tribunal found that Direct Line could have given her the benefit of the doubt, and rated her “good”, which then would have also resulted in a pay increase;
- furthermore, the ruling expressed as “requires improvement” is inherently unfavourably if the person, because of their disability cannot improve or meet the required standards although the Tribunal did acknowledge Direct Line’s argument, that the rating was justified as it needed to deliver a high-quality service to its customers, and therefore it was a legitimate aim and it rejected this claim due to the lack of evidence;
- putting her through a disciplinary process and giving her a warning, even though she had explained that her performance problems were due to her disability and was because the line manager had failed to follow the Company’s own disciplinary policy;
- their policy specifically required a manager to consider any underlying issues that needed considering prior to taking formal action but whilst the manager was aware of the health difficulties they chose to ignore them and, moreover, the the disciplinary chair should have obtained current occupational health advice before taking a decision;
- withdrawing her discretionary sick pay, even though she was unfit for work due to her disability was taken without reasonable and proper cause, which amounted to unfavourable treatment and there was no medical evidence that backed up Direct Line’s view that she had not been doing all she could to return to work.

The Tribunal also found that Direct Line had failed to sufficient make reasonable

adjustments for Ms L's disability. Even though they provided training and support, they could have reduced her targets, looked for a role that did not involve interacting with difficult customers, or abandoned the disciplinary process.

In respect of the constructive dismissal claim, the Tribunal found that:-

- the three incidents (withdrawing sick pay, failing to introduce reasonable adjustments and taking disciplinary action) were likely to damage the implied duty of trust and confidence between the parties and amounted to repudiatory breaches;
- however, Ms L had waited eight months to resign from the last of these and, in doing so, had affirmed her contract and the Tribunal recognised that she had been ill during this time, but she had taken part in other internal processes and had obtained support from her union and could have resigned earlier.

Overall, the Tribunal awarded Ms L £64,645 in compensation, which included just over £30,000 for her financial losses, £23,000 for injury to her feelings, and £2,500 in aggravated damages.

This case is a reminder that employers have a duty to make reasonable adjustments for employees with disabilities and that employers should be careful not to take disciplinary action against employees who are experiencing performance problems due to their disability. Specifically, employers should:-

- consider whether an employee's performance problems could be due to a disability before taking any disciplinary action;
- make reasonable adjustments for employees with disabilities, even if they are only temporary;
- ensure all avenues have been exhausted;
- seek medical advice early in the process; and seek updated evidence before any formal sanction;
- be mindful of the impact that their decisions may have on employees with disabilities.

3. Long-serving manager was constructively dismissed when her request for reduced hours after returning from adoption leave was refused

An Employment Judge at the Leeds Employment Tribunal has ruled that a firm's HR Manager 'sought to cover her tracks' after realising she had failed to follow proper procedures in denying a request for reduced hours of work. The Judge ruled that a former cleaner and manager was unfairly dismissed after her flexible working request was denied after returning from adoption leave.

Mrs P worked for Clean and Tidy Domestic and Commercial Cleaning Ltd from March 2008 until her resignation on 31 May 2023.

Mrs P and her partner adopted two sons in June 2022, and then had a period of adoption leave. Following the end of her leave, she submitted a flexible working request to look after her sons – one of whom the Tribunal described had previously experienced “trauma” and “needed stability”. But the Tribunal found that the firm’s HR Manager sought to “cover her tracks” after she realised she had not followed proper procedures in denying Mrs P’s request. While her claims of direct disability discrimination were dismissed, Mrs P was awarded compensation for unfair constructive dismissal.

Initially Mrs P worked as a cleaner, but was promoted to Supervisor, which involved training new recruits as well as continuing to have cleaning responsibilities. Two years later, her health began to deteriorate and she was diagnosed with carpal tunnel syndrome on her right wrist, and Kienbock disease on her left wrist. She underwent surgery for this in 2014, and her orthopaedic specialist told her to reduce her workload.

Following this, Mrs T, the General Manager and owner of the business allocated her a role of managing holiday lets and training cleaning operatives. By 2014 she had substantially reduced the cleaning work she did. By the summer of 2015 following more surgery, her role had primarily become managing holiday lets and checking the cleaning being done at racecourses.

Mrs P and her husband planned to adopt, and the Company hired Mr W in anticipation of her adoption leave. She adopted two sons and started her adoption leave on 1 June. The Tribunal heard that she and Mr W worked together for a year, and “had a warm and friendly working relationship”.

In November, Mrs T sold the Company to Lightowler, a larger cleaning Company, and left the business. Mr W then took over her responsibilities and became General Manager.

Following the acquisition, Miss W took over as the Human Resources Manager, however she admitted to having no experience of dealing with employees returning to work after a period of family leave, and had never dealt with a flexible working request.

In February 2023, Mrs P sent an email outlining that her adoption leave was due to finish and that she wanted to come into the office to discuss her return to work and her working hours.

The Tribunal stated that “Mr W was very excited to discover that the claimant intended to return to work, having assumed she would not be. He had enjoyed working with her and appreciated the experience she brought and the help she had given him in learning the job.”

Mrs P sent another email to Mr W in March outlining that she wanted to return to work on 1 May on two days a week, but would be able to increase her days the

following year when her sons required less child care. But in April, Miss W phoned her and told her that her request to work two days a week had been declined.

However, Miss W denied this, and claimed that in the phone call she said that the matter was still under review. The Tribunal did not accept this, as Mrs P sent Miss W an email within half an hour of the call asking for the reasons they had denied her request.

In May, Mrs P's solicitor wrote to the respondent highlighting the shortcomings in its handling of her flexible working request, outlining her legal claims and that she sought a financial settlement in return for an agreed termination of her employment at the end of her adoption leave.

Miss W did not reply to that letter, but instead wrote to Mrs P in May saying that no decision had yet been made, but if she was not happy with the decision when she received it, she would be able to appeal the decision.

The Tribunal said "It was more likely than not that the email was drafted in this way because, having received the solicitor's letter, Miss W realised that she had made her decision without following the proper process and she was trying to 'cover her tracks'."

In May Miss W and Mrs P had their first formal meeting since the request had been made, and the Tribunal described "even on Miss W's own evidence [...] she had already decided that the claimant's request for a two-day week could not be accommodated and would be refused".

Mr W and Miss W had agreed that the business had no need for an employee to work two days, and they noted Tuesdays and Thursdays – Mrs P's preferred working days – were not busy days of the week. Mr W was already working full-time and did not have the capacity to take up the other three days of her work.

In May, Miss W wrote again to her saying they could not agree to a two-day week and it needed her to return to work for four days a week. She also said in the letter that the company could not afford the extra cost of recruiting another member of staff to cover the handover from Mrs P at the end of her work period.

Mrs P resigned on 31 May, outlining in her resignation letter that the Company had failed in its obligations towards her in dealing with her flexible working request, and that there were no valid reasons for refusing it.

The Employment Judge said Miss W failed to properly consult with Mrs P before reaching her decision, "and pretended that a decision had not been made when it had", resulting in Mrs P being unfairly constructively dismissed.

However, the Tribunal concluded that it had not seen evidence to indicate that Miss W acted as she did because Mrs P had taken adoption leave. Instead, "the Tribunal

finds that it was effectively because of Miss W’s inexperience in dealing with flexible working requests, her failure to understand the need to obtain full information and discuss the request with the claimant before reaching a decision and her desire to cover her tracks when she realised she should not have reached a decision when she did.” In total, the Tribunal awarded her £15,048.18 in compensation for unfair dismissal.

4. New Carers’ Leave Act

New carer’s legislation came into force on 6 April and means that employees will be entitled to a week of unpaid leave to undertake caring responsibilities under the Carers’ Leave Act 2023,. The right to take carers’ leave begins from day one of employment, and can be taken by the employee to provide or arrange care for a dependant with a long-term care need. It covers dependants that require care for an illness or injury that means they are likely to need care for more than three months, or for a disability, or those who require care because of old age.

The Act entitles employees to one week of unpaid leave every 12 months, a ‘week’ referring to the amount of time they usually work over seven days. It can be taken as individual or half days split throughout the year, or all at once. Employees will have to give at least three days’ notice to take leave or, for a request of more than one day, double as long as the requested leave.

This is fairly groundbreaking legislation to recognise unpaid carers in the workplace for the first time. Unpaid care is an issue faced by employees across the whole breadth of an organisation, from senior leaders to junior members of staff and women and those over 50 are most likely to be affected.

While organisations cannot refuse a request, they can defer it if “the operation of their business would be unduly disrupted if the employee took carers’ leave during the period identified in the notice”. The postponed leave has to begin no later than one month after the first day of the employees’ original request. Employers have to inform the employee “as soon as reasonably practicable”, no later than seven days after the request and before the first day of the original requested leave.

Awareness raising seems to be key. Many people do not see themselves as carers and it takes an average of two years for someone to acknowledge their role as a carer. For many employers the first step might be understanding what is meant by unpaid care, raising awareness within the workplace and identifying employees who fall within this definition. It is important for employers to review their current policies to ensure they are offering this new entitlement.

This can be particularly important where employers have generic leave policies instead of different policies for different types of leave. Employers will need to ensure they put procedures in place to approve and monitor requests for carers’ leave ideally”. Employers may consider providing the entitlement as an additional

paid leave entitlement, which could be enhanced in line with other leave entitlements.

In any event, employers should view the Act as just a baseline – a bare minimum of what they should offer carers – rather than best practice and some organisations have already extended paid carers' leave to 10-15 days per year in their policies across all sizes of business!

5. Changes to redundancy law for new and expectant parents

Pregnant women and new parents will receive greater protection from being made redundant under the Protection from Redundancy (Pregnancy and Family Leave) Act 2023, which came into effect on 6 April.

Currently, parents on maternity, adoption or shared parental leave are protected from redundancy during the period of their leave. If there is a prospect of redundancy, then a suitable alternative job must be offered. Failure to do so could be automatic unfair dismissal and discriminatory. The protection ends either at the end of their statutory maternity leave or two weeks after the end of their pregnancy where there is no statutory leave. But under the new Act, the window of time during which a worker is exempt will be extended to safeguard pregnant employees from the time they disclose their pregnancy to their employer until 18 months after the baby is born. It will also apply to employees returning from shared parental leave or adoption leave.

Organisations can prepare for these changes by reviewing and updating their HR policies, procedures and training materials to reflect the law's requirements and employers should train managers ideally to ensure that all levels of management are aware of the changes and understand how to apply them in redundancy situations. It is important that early planning is implemented to mitigate the risk of non-compliance and the associated legal repercussions.

The law also extends the protected period for various categories, significantly impacting how redundancy processes involving new parents are managed. However, while the new rule does not completely prohibit the redundancy of existing employees, it does impose stricter criteria under which this might occur. Employers must prove there are no suitable alternative vacancies and that the redundancy is not related to the employee's pregnancy or maternity leave. This makes it much harder to make pregnant women and new parents redundant, ensuring that their rights are protected during vulnerable times.

Organisations need to have processes in place so that when they are planning restructures and reorganisations that may result in redundancies, they know which affected employees fall into the protected pool. Up until now, that has been fairly easy as the protected employees have been those actually on maternity leave, who have been easy to identify. Now the new rules are in place, employers will have to ensure that they identify in their planning those employees who are pregnant or

who gave birth less than 18 months ago.

The ramifications for employers include increased responsibility, documentation and evidence, as well as potential legal challenges such as non-compliance with the new standards, which might lead to claims of unfair dismissal and discrimination. Employers need to view these changes as an opportunity to support their employees better and enhance their reputation as a family-friendly workplace.

The most important thing is that this enhanced protection is on employers' radars, adding that they can ensure any redundancy processes and offers of alternative vacancies are compliant with the law. Employers should also be prepared for any potential for earlier notification of pregnancies or greater adoption of shared parental leave. As a result, it is a good time to take stock of existing family leave policies and notification procedures to ensure that they are fit for purpose.

Employers will also need to be mindful of the new protections when embarking on a restructuring or redundancy exercise, as the number of employees with priority protection in an organisation at any one time will increase significantly after 6 April. There is no authority on how to allocate vacancies where there are more employees with priority status than there are jobs available, and employees may need to undertake a further selection process. This could be a tricky situation to navigate.

While pregnancy and maternity are protected characteristics under the Equality Act 2010 this has not stopped discrimination from taking place and expectant and new mothers have often reported discriminatory behaviour from their employers, whether it be their negative attitude to the news or a refusal to make reasonable adjustment. However, while this new protection may be a headache for employers, expectant mothers and those on maternity leave, adoption leave or shared parental leave will feel a huge weight off their shoulders, knowing that their jobs have priority status and they have an extra layer of protection when it comes to risk of redundancy. This new legislation represents a significant step towards safeguarding the rights of pregnant employees and those returning from family leave during redundancy situations.

6. Changes to Paternity Leave and Pay in the UK

The Paternity Leave (Amendment) Regulations 2024 and the Statutory Paternity Pay (Amendment) Regulations 2024 came into force on 8 March 2024. Despite the March enforcement date, the changes practically apply to babies born, placed for adoption, or entering Great Britain for adoption on or after 6 April 2024.

Statutory paternity leave is an entitlement that provides eligible employees with up to two weeks of paid time off work to care for the new child or to support their partner (provided they meet the respective eligibility criteria).

The current entitlement to Paternity Leave is to take the leave either as one single week only or as two consecutive weeks' leave but cannot be taken as two separate

one week periods of leave, nor as individual days. The leave must also be taken within 56 days following the date of birth (or date of placement/entry to the UK for adoptions).

The changes to Paternity Leave Entitlement which came into effect are as follows:-

- fathers and partners will now have the option to take the two weeks leave as either two separate one week periods of leave (non-consecutive) or as one continuous period;
- leave can be taken at any point in the 52 weeks after the birth/adoption of their child;
- in the case of birth, the notice period of intention to take paternity leave will be lowered to 28 days before the date (each) period of leave is intended to be taken;
- in the case of adoption, the notice period will remain at 7 days of the employee having received notice of being matched with a child.

The law around statutory paternity pay has also been amended accordingly to allow eligible employees to receive their Statutory Paternity Payment (SPP) accordingly in respect of the leave taken.

7. Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024 (Protection from Redundancy)

Individuals on maternity leave, adoption leave, or shared parental leave should be given first refusal of any suitable alternative employment available if they have been put at risk of redundancy. New laws will extend this protection. The key features are as follows:-

- the protection extension will apply to pregnant workers where the employer is informed of the pregnancy on or after 6 April 2024;
- the protected period after leave has been taken will apply to any maternity/adoption leave that ended on or after 6 April 2024;
- the protection will apply to shared parental leave that started on or after 6 April 2024;
- for maternity, the protected period covers pregnancy and for 18 months from the first day of the estimated week of childbirth;
- for adoption, the 18 months period of protection will begin from the date of placement;
- for shared parental leave, the 18 months period of protection is from the date of birth but only where the parent has taken a period of at least 6 consecutive weeks of shared parental leave;
- for those who suffer a miscarriage and are not entitled to take maternity leave, the protection will cover them for a period of two weeks following the loss of the baby but the employee must have informed the employer of the pregnancy before the loss occurred;
- protection when under shared parental leave will not apply when the person is

protected under maternity/adoption as noted above.

8. Employment (Allocation of Tips) Act 2023

A new Code was approved and will come into force on 1st October 2024 to accompany the new Employment (Allocation of Tips) Act 2023. The new legislation, along with the "Code of Practice on Fair and Transparent Distribution of Tips" aims to improve fairness for workers regarding the allocation of tips.

By introducing this Act, the Government aimed to move from a self-regulated approach, where employers only have a best practice Code for managing service charges, tips and gratuities to a regulated approach with an accompanying Code of Practice. Employers should ensure compliance with the Act and:-

- identify all workers entitled to a proportion of tips and service charge payments received
- set up an appropriate system to ensure all payments received are captured in the 'pot' for distribution
- set up appropriate systems or documentation for maintaining a complete record of payments received
- decide at what intervals payments will be made
- consider factors for determining the fair and transparent allocation of payments, in line with the Code
- decide who will be responsible for allocating payments to workers
- consult with workers to seek a broad agreement on the approach to allocating and distributing payments
- have a written policy that clearly sets out the process
- determine how and when to communicate the policy to customers
- develop a process for handling non-adherence to the policy by workers
- develop and update existing employment documentation (letters, contracts, handbooks)
- train managers to ensure they understand how tips are handled.

9. Labour's employment law reforms – "A new era for workers' rights"

In a landmark shift for UK employment law, the newly elected Labour Government has unveiled an ambitious agenda to overhaul workers' rights and reshape the employment landscape. The new Administration has committed to introducing legislation within its first 100 days in office, which will take the form of an Employment Bill, signalling a rapid and comprehensive transformation of workplace regulations.

(a) Day One Rights

- **Unfair Dismissal Protection**: Employees will have the right to claim unfair dismissal from their first day of employment, rather than after two years of

service. However, employers will still be able to operate probationary periods with fair and transparent rules and processes.

- **Statutory Sick Pay (SSP):** SSP will be payable from the first day of sickness, rather than the fourth day and the lower earnings limit for SSP eligibility will also be abolished.
- **Parental Leave:** The right to parental leave will become a day one entitlement, removing the current one-year service requirement.
- **Flexible Working:** Flexible working will become the default arrangement for all workers from day one, except where it is not reasonably feasible.

(b) Employment Status and Contracts

- **Single Worker Status:** The Government plans to move towards a simplified two-tier system of "worker" and "self-employed," merging the current categories of employee and worker. This change will extend various employment rights to a broader group of workers.
- **Zero-Hours Contracts:** "Exploitative" zero-hours contracts will be banned and workers will have the right to a contract reflecting their regular hours, based on a 12-week reference period.
- **Fire and Rehire:** The practice of "fire and rehire" will face stricter controls, with a strengthened code of practice replacing the current Statutory Code.
- **Notice of Work Changes:** To introduce a right to give workers reasonable notice of work schedules and wages for shifts cancelled at short notice.

(c) Equality and Inclusion

- **Equality (Race and Disability) Bill: This new Bill would legislate to place a duty on** large employers (250+ employees) will be required to report on ethnicity and disability pay gaps, in addition to existing gender pay gap reporting and will also need to publish action plans for closing these gaps. It would also enshrine in law the full right to equal pay for ethnic minorities and people with disabilities by making it easier to bring unequal pay claims.
- **Menopause Action Plans:** Large employers will be required to produce menopause action plans demonstrating how they support employees going through menopause.
- **Equal Pay Claims:** The right to make equal pay claims will be extended to include race and disability, not just sex.
- **Trade Union Act 2016**: The intention is to make changes to the Trade Union Act 2016 and abolish certain rules on industrial action.

(d) Trade Union and Collective Rights

- **Workplace Access:** Trade unions will be given a reasonable right to access workplaces for recruitment and organising purposes.
- **Collective Consultation:** The threshold for triggering collective redundancy consultation will be changed to consider the number of redundancies across the entire business, rather than at individual establishments.

- **Union Recognition:** The process for statutory recognition of trade unions will be simplified, with changes to voting thresholds.

(e) Other Employment Law Changes

- **Employment Tribunal Time Limits:** The time limit for bringing claims to an Employment Tribunal will be extended from three to six months.
- **National Living Wage:** The National Living Wage will be extended to all adult workers, with the Low Pay Commission considering the cost of living when setting rates.
- **Bereavement Leave:** A new statutory right to bereavement leave for all workers will be introduced.
- **Right to Switch Off:** Labour plans to introduce a "right to switch off," encouraging policies that protect personal time when working remotely.
- **Single Enforcement Body:** A new Fair Work Agency will be established to enforce workers' rights and have powers to inspect workplaces and take legal action against non-compliant employers.
- **Protections for new mothers:** A strengthening of the protections for new mothers by making it unlawful to dismiss a woman who has had a baby, for the period of six months after their return to work (with certain exceptions).
- **Right to Join a Trade Union:** All new starters to be informed of their right to join a Trade Union.
- **School Support Staff Negotiating Body:** he School Support Staff Negotiating Body to be reinstated to establish national terms and conditions, career progression routes and fair pay rates.
- **'Fair Pay Agreement':** Create a 'Fair Pay Agreement' to allow for sectoral collective bargaining in the adult social care sector

As the Government begins the process of drafting and implementing these sweeping reforms, businesses and workers alike should be braced for significant changes in the employment landscape. While supporters hail these measures as a long-overdue upgrade to workers' rights, critics warn of potential impacts on business flexibility and costs. The coming months will be crucial as the details of these proposals are fleshed out and debated in Parliament and as they are approved details will be covered in future HR Bulletins.

10. Children's Wellbeing Bill

Whilst this is not purely an employment Bill, the part of the Children's Wellbeing Bill will have an impact. The Bill, if passed as law, would enable serious teacher misconduct to be investigated regardless of when the misconduct occurred, the setting the teacher is employed in and how the misconduct is uncovered.

11. Digital Information and Smart Bill

The Digital Information and Smart Bill is another Bill that is not specific to

employment but if it passes as law, then it would establish digital verification services to ensure the creation and adoption of secure and trusted digital identity produces and services from certified providers, that includes pre-employment checks. It would also modernise and strengthen the Information Commissioner Office by introducing a CEO, Board and Chair, and would bring new and stronger enforcement powers.

12. Update to the Dismissal and Re-engagement Code of Practice

On 18th July, a new statutory Code of Practice on Dismissal and Re-engagement came into effect across England, Scotland, and Wales. This Code introduces specific procedures that employers must follow when considering the dismissal and re-engagement of employees, a practice commonly known as 'fire and rehire'. The Code emphasises that this approach should be used only as a last resort after a thorough and meaningful consultation period.

The Code also offers detailed guidance for employers who may be contemplating changes to one or more employees' contracts or anticipating that employees or their representatives might not agree to these changes, potentially leading to dismissal and re-engagement.

When addressing terms and conditions under the Code, it is important to note that it applies to both implied and express terms. Express terms are those explicitly agreed upon, either in writing or verbally. The term 'conditions' may also refer to those outlined in employment documents such as collective agreements, employee handbooks, or letters, provided they are incorporated into the contract.

The Code applies to any situation within its scope, regardless of the number of employees affected or the reasons behind the proposed changes. However, it is essential to note that the Code does not apply to situations arising purely from redundancy.

Legally, while the Code does not, on its own, make an employer liable for Tribunal proceedings, it can be presented as evidence in such cases. Courts, Employment Tribunals, and the Central Arbitration Committee must consider the Code when it is presented during proceedings. Moreover, a Tribunal can increase an award by up to 25% if an employer unreasonably fails to adhere to the Code, or reduce the award by up to 25% if the employee is found to have acted unreasonably.

The most recent update to the Code includes the reintroduction of a line initially present in the draft but omitted in the final version. Specifically, paragraph 52 now states:-

"The employer should ensure that the only terms which are changed are those which have been subject to the information-sharing and consultation process, and should not use this as an opportunity to make any further changes."

Additionally, some minor wording and heading adjustments were made, but these do not materially alter the meaning or intent of the Code.

If you have any questions on the above or wish to have your relevant employment policies reviewed, please let me know.

13. Further help and/or advice

If any of the above is not clear or you wish to discuss it or just would like further advice on any of the issues in this Bulletin or indeed support on any other issue or particular employment situation, please do contact me on clivep@cpassociates.co.uk or call me on 01582 755172 or 07970 381592. I look forward to hearing from you on anything on which I may be able to help.

Clive

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