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EMPLOYMENT UPDATE APRIL 2024

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thanks to Make UK for making this information readily available

The Flexible Working Act 2023

The Flexible Working Act 2023 (and related Regulations) will change the statutory flexible working regime in various ways, including making the right to request flexible working a "day one right".

The Regulations are due to come into force on **6 April 2024**, meaning that the requirement to have 26 weeks of continuous employment will not apply to applications for flexible working made on or after that date.

What? The Employment Relations (Flexible Working) Act 2023, which received Royal Assent in July, will change the statutory flexible working regime in various ways. In particular, it will:

- *introduce a new requirement for employers to consult with the employee, as a means of exploring the available options, before rejecting a flexible working request;*
- *allow employees to make two statutory requests in any 12-month period (rather than the current one);*
- *require employers to reach a decision in respect of a statutory flexible working request within a two month period (rather than the current three months); and*
- *remove the existing requirement that the employee must explain what effect, if any, the requested change would have on the employer and how that effect might be dealt with.*

In addition, new Regulations will make the right to request flexible working a "day one right" (so that no minimum length of service is required before an employee can make a flexible working request).

When? The Government has laid Regulations before Parliament which are due to come into force on 6 April 2024, meaning that the requirement to have 26 weeks of continuous employment will not apply to applications for flexible working made on or after that date. We assume that the Government intends to bring the amendments to the flexible working regime introduced by the Employment Relations (Flexible Working) Act 2023 (outlined above) into force on the same date.

Other points to note? An updated Advisory, Conciliatory and Arbitration Service (Acas) Statutory Code of Practice on Flexible Working, providing guidance on the new regime, has been laid before Parliament. The updated Code sets expectations for the process that employers should follow when handling flexible working requests. Failure to follow the Code does not, of itself, give employees a right to bring an employment tribunal claim, but tribunals must take the Code into account when considering relevant cases. (At the time of writing, the Code has not yet been made available online, but we expect it largely to mirror the draft Code that Acas published for consultation back in July – Make UK was involved in an Acas-led working group looking at the draft Code over the summer. Acas has also not yet published its further guidance on handling flexible working requests, that it has said will accompany the Code.)

The Government's Flexible Working Task Force (to which Make UK is an active contributor) has also been exploring ways to encourage flexible working.

The Working Families charity is relaunching its "Happy to Talk Flexible Working" (HTTFW) guidance and logo, which can be used as a strapline when advertising jobs of all levels and pay grades as flexible.

Next steps for employers? Once the updated Acas Code and accompanying guidance are available, you will need to review your HR policies to ensure they comply with the new rules. You will also need to provide updated training for anyone in your organisation who handles flexible working requests, such as line managers and those in HR.



Protection From Redundancy (Pregnancy & Family Leave) Act 2023

The Protection from Redundancy (Pregnancy and Family Leave) Act 2023 will extend the redundancy protections that currently apply to employees on maternity, adoption and shared parental leave to employees who are pregnant or who have recently returned to work from such leave. Again, these changes are expected to take effect from 6 April 2024.
What? The Protection from Redundancy (Pregnancy and Family Leave) Act 2023 will extend the redundancy protections that currently apply to employees on maternity, adoption and shared parental leave to employees who are pregnant or who have recently returned to work from such leave.

Currently, individuals who are on maternity, adoption or shared parental leave have priority over other at-risk employees for any suitable alternative vacancies in a redundancy situation. The Protection from Redundancy (Pregnancy and Family Leave) Act 2023, together with the newly published draft Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024, will extend these protections to employees who are pregnant or who have recently returned to work from such leave.

In relation to pregnancy, the Regulations provide that the period of pregnancy is protected from the date on which the employee informs the employer they are pregnant. The additional protected period for employees returning from maternity leave ends 18 months after the date of the child's birth (or 18 months after the first day of the expected week of childbirth if the employee did not inform the employer of the child's date of birth during their maternity leave). This means that an employee who takes a year of maternity leave will receive six months of additional redundancy protection after returning to work.

For adoption leave, the 18 month protected period begins on the day the child is placed with the employee for adoption. For shared parental leave the 18 month protected period begins when the child is born or is placed for adoption. However , for employees taking shared parental leave who have not also taken maternity or adoption leave, there is a six-week threshold of continuous leave that needs to be met for the protected period to extend after shared parental leave itself has ended. Where the six-week threshold is not met, the protection applies during shared parental leave only. This is intended to avoid the situation where, for instance, an employee who took only a couple of weeks off would benefit from the same priority for alternative vacancies as an employee who was out of the business for many months. (Protection on return from shared parental leave will not apply where an employee has also taken maternity or adoption leave and is entitled to protection on their return to work under those provisions.)



When? The Government has laid Regulations before Parliament which are due to come into force on 6 April 2024. The additional protection set out in the Regulations applies:
·for pregnant employees, where they inform their employer of their pregnancy on or after 6 April 2024;

- *for employees returning from maternity leave or adoption leave, where they return on or after 6 April 2024;*
- *for employees returning from shared parental leave, where they take a period of at least six consecutive weeks of shared parental leave that commences on or after 6 April 2024.*

Next steps for employers? It is essential that employers who may be considering redundancies keep in mind this forthcoming extension of protection for those that take family-related leave. When these changes come into force, anyone involved in any redundancy consultation exercise (such as line managers and HR) will need to be trained about these new rules, so they understand how to manage potentially

The Carers Leave Act 2023

The Carer's Leave Act 2023 will give employees who have a dependant with a long-term care need a statutory right to one week's unpaid care leave per year. This right will come into force from 6 April 2024.

What? The Carer's Leave Act will give employees who have a dependant with a long-term care need a statutory right to one week's unpaid care leave per year. (The definition of "dependant" mirrors the definition used for the right to emergency time off for dependants.)

The draft Carer's Leave Regulations 2024, setting out further details of the right, have now been published. This right will apply from day one of employment and employees will not be required to provide any evidence of their entitlement to the leave.

The Regulations confirm that carer's leave will be available to be taken flexibly – as either full days or half days, up to a block of one week in a 12 month period. They also set out the notice requirements for taking carer's leave: employees must give notice that is twice the length of the time being requested as leave, subject to a minimum notice requirement of three days.



Employers cannot prevent employees from taking the leave, although they can postpone it for up to one month if they reasonably consider that the operation of the business would be unduly disrupted by the employee taking the leave on the requested dates.

Employees who take carer's leave will be protected from being dismissed or subjected to a detriment as a result.

When? The Government has laid Regulations before Parliament which are due to come into force on 6 April 2024.

Other points to note? A "long-term care need" is defined as an illness or injury (either physical or mental) that requires or is likely to require care for more than three months, a disability under the Equality Act 2010, or issues related to old age. The focus on a long-term care need is deliberate as the Government has stated that other types of leave (such as time off for dependants or annual leave) should be used for dealing with short term care needs.

Next steps for employers? Once the Regulations have been finalised, you will need to update your policies, train your managers about the impact of this new legislation, and communicate changes to the workforce. Employers wishing to take a supportive approach may also consider whether to enhance the pay provided during carer's leave, although there will be no legal obligation to do so.

The Workers (Predicatable Terms & Conditions) Act 2023

The Workers (Predictable Terms and Conditions) Act 2023 will introduce a statutory right for eligible workers to request a more predictable working pattern (expected in September 2024)

What? The Workers (Predictable Terms and Conditions) Act 2023 will introduce a statutory right for eligible workers to request a more predictable working pattern. See here for further details.

When? The Government expects the measures in the Act and the relevant regulations to come into force approximately one year after the date of Royal Assent (i.e. around 19 September 2024). Other points to note? Make UK has been engaging with Government on these issues and will be contributing to the new ACAS consultation on the statutory Code of Practice (which will provide guidance on how to make and handle requests).



Next steps for employers? Draft regulations will be published in due course setting out more detail on the practical operation of the new rules. In particular, the regulations are expected to state how much compensation an individual will receive if this new statutory right is breached (which is likely to be a specified number of weeks' pay).

Regulations should also clarify the qualifying period for eligibility. It is expected that individuals will need to have worked for their employer for 26 weeks before making an application for a more predictable working pattern, although this is subject to parliamentary approval. Given that the new rules aim to support workers with unpredictable contracts, it is envisaged that workers will not need to have worked continuously during the 26-week eligibility period.

Once the detail of the regulations in known, you will need to update your policies and procedures to reflect the new entitlements, as well as training managers on the impact of this new legislation. You will also need to communicate relevant changes to your workforce.

The Workers Protection (Amendment Of Equality Act 2010) Act 2023

The Worker Protection (Amendment of Equality Act 2010) Act 2023 will introduce a new duty on employers to take reasonable steps to prevent sexual harassment at work (due to come into force from October 2024).

What? The Worker Protection (Amendment of Equality Act 2010) Act 2023 will introduce a new duty on employers to take reasonable steps to prevent sexual harassment at work. See here.

Once the law comes fully into force, the new duty on employers will be enforceable by the Equality and Human Rights Commission (EHRC). In addition, employment tribunals will have the power to uplift the compensation awarded in sexual harassment cases by up to 25% if they find that an employer has breached the duty.

When? The new measures will come into force one year after the Act was passed (i.e. on 26 October 2024).

Other points note? The EHRC plans to update its technical guidance on sexual harassment to reflect the new duty.



It is interesting to note that the wording of the draft Bill initially placed an obligation on employers to take 'all reasonable steps' to prevent sexual harassment at work. However, that wording was amended in the House of Lords to require employers to take only 'reasonable steps' to do so. This amendment stemmed from concerns that there would otherwise be an almost infinite number of steps that employers could be expected to take. In addition, the draft Bill had originally included a provision reinstating protections relating to harassment by third parties, such as clients and customers (which had been repealed in 2013, after that earlier legislation was deemed to be unworkable), but this was also dropped as the Bill worked its way through Parliament.

Next steps for employers? Employers can already be found liable for harassment carried out by their employees unless they have taken "all reasonable" steps to prevent such harassment. However once the new regulations are finalised and their implementation date has been confirmed, you will need to update your policies and procedures to ensure they are fit-for-purpose in light of the additional duty, as well as training your managers about the impact of this new legislation. In addition, you will also need to communicate these changes to your workforce.

Neonatal Care (Leave + Pay) Act 2023

The Neonatal Care (Leave and Pay) Act 2023 will allow eligible employed parents whose newborn baby is admitted to neonatal care to take up to 12 weeks of paid leave. The exact timeframe for implementation of this legislation is not yet known, but the new leave and pay entitlements are not expected to come into force until April 2025 (to coincide with the start of a new tax year and give employers, payroll providers and HMRC time to prepare
What? The Neonatal Care (Leave and Pay) Act 2023 will allow eligible employed parents whose newborn baby is admitted to neonatal care to take up to 12 weeks of paid leave in addition to other leave entitlements such as maternity and paternity leave.

This leave is intended to support employees with a parental or other personal relationship with a baby who is receiving neonatal care. The regulations will set out the eligibility criteria in detail, but we assume it will be the same as for paternity or shared parental leave (i.e. the baby's parents, married to/partner of the baby's parent or expected to have the responsibility of bringing up the child).



The right to leave will apply from day one of employment, although the right to pay will be subject to a 26 week service and minimum earnings requirement (in the same way as the right to statutory maternity pay).

Employees who take neonatal care leave will be protected from being dismissed or subjected to a detriment as a result.

When? The exact timeline of implementation of this legislation is not yet known, but these new leave and pay entitlements are not expected to come into force until April 2025 (in order to coincide with the start of a new tax year and give employers, payroll providers and HMRC time to prepare). We will of course keep subscribers updated on relevant developments.

Other points to note? The definition of neonatal care is yet to be specified, but the general requirement is for the baby to receive at least seven consecutive days of medical or palliative care within the first 28 days of birth.

The length of neonatal care leave in each case will be dependent on how long the baby spends in hospital, with parents entitled to up to 12 weeks of neonatal care leave and subject to a minimum entitlement of one week. The leave must be taken within the first 68 weeks of the baby's birth. It is expected that it will be possible to take it in non-consecutive periods of at least a week, as is the case with shared parental leave.

Next steps for employers? Once the regulations are finalised and their implementation date has been confirmed, you will need to update your policies, train your managers to handle requests, and communicate changes to the workforce. Employers wishing to take a supportive approach may also consider whether to enhance the pay provided for neonatal care leave, although there will be no legal obligation to do so.

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