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Employment Law Latest 2023: Updates For SME's



As an SME employer, it can be challenging to keep pace with the ever-changing landscape of employment law. However, it is essential to keep up to date with new legislation and guidance to ensure compliance and mitigate risk to your business. In this blog post, we provide an overview of some of the recent UK employment law developments. Please do contact us for more information or if you have any questions.

Retained EU Law (Revocation and Reform) Act:

This act deals with the revocation and reform of EU laws in the UK following Brexit. Several of the EU laws will go, however not much Employment Law will go. It is essential to stay updated on these changes, as some of the laws may be relevant to your business. Please read the details set out below.

Neonatal Care (Leave and Pay) Act 2023:

This new act grants parents of premature or ill babies the right to take 12 weeks of neonatal care leave in addition to maternity/paternity leave. It aims to provide support for families during challenging times. The act also introduces statutory neonatal pay, which will be paid at the same rate as statutory maternity pay. This would be a day 1 right. Proposed date; April 2025.

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Carer's Leave Act 2023:

This act grants employees the right to take one week of unpaid leave per year to provide or arrange care for a relative or dependent with a long-term care need. It also provides protection from dismissal and any detrimental treatment resulting from taking this leave. For SMEs, this means ensuring that employees are aware of their rights and that the relevant policies are in place to support them. This would be a day 1 right. Proposed date; April 2024.

Protection from Redundancy (Pregnancy and Family Leave) Act 2023:

Current legislation states if a role is made redundancy during maternity leave, the maternity leave employee should be offered suitable alternative employment/redeployment vacancies over other employees (effectively jumping the queue). This is only during maternity leave periods, once the employee returns to work this protection ends. This extension of the act aims to protect employees from redundancy during maternity leave and extends the **protection to a period after the maternity leave** (period not yet defined).

Further regulations are needed to define the exact period of protection. As an SME employer, it is crucial to ensure that you are compliant with this legislation once it is implemented, to avoid costly tribunal claims. Proposed date; 2024.

Employment (Allocation of Tips) Act 2023:

This act ensures that tips are allocated fairly and without deduction, except for tax and national insurance. It also requires tips to be paid no later than the end of the month in which they were received and must cover agency workers. For businesses that rely on tips as part of their revenue, it is essential to make sure that the relevant policies and procedures are in place to ensure compliance. Proposed date; 2024.

Workers (Predictable Terms) Act 2023:

This act grants workers the right to request a more predictable working pattern, particularly relevant for zero hours and casual workers. Employers must deal with these requests in a reasonable manner, although they can refuse them based on similar grounds as stated in the Flexible Working Regulations (lack of work on the days requesting to work, operational and customer service needs). It is essential to have policies and procedures in place to manage these requests and ensure that workers are treated fairly. Proposed date; September 2024.

Employment Relations (Flexible Working) Act:

Currently; 26 weeks service required to request flexible working, one request per year.

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Employment Relations (Flexible Working) Act:

The amendments to this act grants employees the right from day one of employment and extends to make two requests for flexible working per year. It abolishes the requirement for employees to explain the effect of the request in the workplace and imposes a requirement on the employer to engage with the requests within two months. The maximum award to the employee when an employer has not followed the right procedures is “8 weeks' pay”. As an SME employer, it is crucial to ensure that the relevant policies and procedures are in place to manage these requests to comply with the legislation. Proposed date; July 2024.

Indirect Sex Discrimination:

This refers to an employer putting provisions, criteria, or practices in place within the workplace, which puts women at a particular disadvantage. There is a justifiable defence available to employers; that the criteria being applied is a proportionate means of achieving a legitimate business aim. Cost alone is not enough; evidence must be provided. SMEs must ensure that their policies and practices do not indirectly discriminate against any protected groups, including women. E.g. declining flexible working requests, ending hybrid working, employers must be able to justify with evidence and good business reasons.

TUPE (Transfer of Undertakings (Protection of Employment) Regulations (Tweaks):

TUPE ensures that employees' terms and conditions are protected when a business or service they work for is transferred to a new employer.

- Employers have an obligation to inform and consult **representatives of affected employees**, even in cases of small transfers or intragroup transfers.
- Employers must consult with these **elected representatives or the trade union** even if only 1 employee is transferring.

Employees Protected Against Dismissal:

For SMEs, understanding TUPE is essential when undergoing a merger or acquisition or a new business being established.

Failure To Inform And Consult

- If the employer does not consult with the employees correctly.
- Compensation award payable to each affected employee of 13 weeks' pay (All employees would be eligible to receive this award). With Uncapped weekly pay.

It would only take one employee to enforce this breach and it would then apply to all the remaining affected employees.

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➤ Very costly risk

TUPE Update 2023: Proposals

➤ Currently: Micro-business exemption for businesses with fewer than 10 employees

➤ **Proposal: Extend exemption to**

- Quite small businesses (Fewer than 50 employed)
- Small transfers (fewer than 10 employees transferring, regardless of size of business)

➤ You still have to inform and consult directly with affected employees but would be able **to conduct the consultation on an individual basis.**

➤ No proposal to make intra-group transfers exempt.

Proposed date; July 2024

Post-Termination Restrictions:

These are restrictions in employment contracts that aim to protect client relationships, protect sharing of company confidential information, and protect team stability. (E.g. upon leaving; don't solicit or conduct business with our clients, don't poach colleagues, don't work with our direct competitors)

- They must be carefully drafted and regularly reviewed, to ensure the terms are no wider than necessary.
- They should be tailored to the individual employee/ and role and not blanketly applied.
- They are very hard to enforce. (SME would need to apply to the court for an interim injunction, very costly to do this)
- They can be a valuable tool, if relevant to the role, if only a deterrent.
- Government plans to reduce the limits of; "no compete clause" to 3 months; this won't affect non solicitation, non-dealing, and non-poaching clauses.

Holiday Pay:

EU Working time directive, which is very complicated, and hard to manage.

One Brexit benefit; UK government has drafted changes to holiday pay calculations; as follows; Applies from January 2024;

- Holiday can be accrued at 12:07% of hours worked.

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- Every hour worked you would accumulate holiday (work; zero hours contracts).
- Rolled up holiday pay will be allowed.
- Holiday pay must be shown on the payslip as a separate element.
- One simple normal weekly pay calculation will be allowed for holiday pay but must include commission and regular overtime.
- Relaxing the record keeping requirements.

Government's Plan To Introduce A New Version Of GDPR:

The UK government plans to introduce a new British data protection system that moves away from a "one size fits all" approach. The new regime aims to reduce burdens for British organisations and may include;

- Removal of the requirement for data protection officers, (replacing with high-risk processor or a senior responsible person)
- Subject access requests can be declined if excessive and unfounded.
- Allow consent requirements for cookies.
- Legitimate interests; established list of criteria; individual versus company,
- The definition of "personal data established."; any information that identifies the source. SMEs must ensure that they stay abreast of these changes and ensure their data protection policies and procedures are up-to-date and compliant.

Worker Protection (Amendment of Equality Act 2010) Act 2023:

This act represents a significant change to workplace discrimination law. It introduces a statutory duty on employers to take reasonable steps to prevent sexual harassment of their employees.

SME employers must ensure that they have robust policies and procedures in place to prevent sexual harassment and take reasonable steps to protect their employees.

- Regular training for all employees.
- Review your policies.
- Establish clear reporting lines.
- Respond quickly to incidents reported.
- Fully investigate.
- Follow a due process of the complaint.
- Follow relevant policies and ACAS guidelines.
- Further guidance to come.
- Risks; uplift to compensation of 25% for a successful claim award for sexual harassment; where the employer failed in its duty to follow reasonable procedure.

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Artificial Intelligence (AI) In The Workplace:

AI refers to technology that enables computers to think or act in a more human-like way. It can be used in various ways in the workplace, such as recruitment, summarising meeting notes, research, translation, and content writing. However, there are challenges related to accuracy, not following legislation requirements or ACAS guidelines, source inaccuracies, confidentiality issues, ethical concerns, deliberate manipulation, and copyright infringements putting employers at risk of unfair dismissal claims if data is inaccurate. As an SME employer, it is essential to consider these challenges when implementing AI technology in your workplace.

New ACAS Guidance On Mental Health Reasonable Adjustments:

ACAS has issued new guidance on making reasonable adjustments for employees with mental health conditions. Employers are recommended to consider reasonable adjustments even if the condition is not classified as a disability. SMEs must ensure that their policies and procedures align with this guidance and that they are providing appropriate support to all employees.

Fire And Rehire Process:

Fire and rehire is a controversial practice where employers terminate existing contracts and offer new contracts with different terms and conditions. The process involves consultation, offering new terms, further consultation if employees refuse, and ultimately dismissal if they do not agree to the new terms. SMEs should exercise caution when considering this practice, as it can potentially lead to disputes and negative media attention.

Protected Conversations (Discussing Settlement Agreements):

- Can be raised out of the blue.
- Cover only unfair dismissal only (not discrimination, or equal pay).
- If the employee declines the offer the discussion is inadmissible in an Employment Tribunal.

Without Prejudice; Conversation. (Discussing Settlement Agreements):

- An existing dispute required; (performance, disciplinary, grievance).
- All potential claims covered and protected by from a Tribunal claim.
- In most cases recommendation to use “without prejudice conversation” to protect your company under the S111A employment rights act.
- Seek advice.

Labour Employment Law Changes Proposed (If they win the next election):

The Labour party has proposed various changes to UK employment law should they win the general election.

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- They seek to ensure that all "basic rights" are granted from day one of employment.
- This means that all employees would have access to protection against unfair dismissal, redundancy pay, and the national minimum wage from their first day of work.
- They also propose removing probation periods.
- They advocate enhancing eligibility for Statutory Sick Pay (SSP).
- Giving workers the right to "switch off" outside of working hours with the employer not being able to contact them during this time.
- Extending the time limit for tribunal claims to 6 months.
- Providing additional redundancy protection to employees.
- Making it easier for Trade unions to be recognised in your business and giving union members greater access to their members in your workplace.
- Banning the ability to end a contract of employment and re-engage on a new contract.
- It is worth noting that these are still in the proposal stage, and subject to Labour winning the next general election.

Statutory Rates:

2023/2024

National minimum wage

Age	Rate from 1 April 2023	Rate from 1 April 2024
Workers aged 23 and over (NLW)	£10.42	-
Workers aged 21-22	£10.18	-
National Living Wage for workers aged 21 and over	-	£11.44
National minimum wage for workers aged 18-20	£7.49	£8.60
Young workers rate for workers aged 16-17	£5.28	£6.40
Apprentices under 19, or over 19 and in the first year of the apprenticeship	£5.28	£6.40

Family-friendly payments

Payments	From 2 April 2023	From April 2024 (proposed)

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Statutory shared parental pay (ShPP) Statutory rate or 90% of employee's weekly earnings if this is lower.	£172.48	£184.03
Statutory maternity pay (SMP) First six weeks – 90% of employee's average weekly earnings. Remaining weeks at the statutory rate or 90% of employee's weekly earnings if this is lower.	£172.48	£184.03
Statutory adoption pay (SAP) First six weeks – 90% of employee's average weekly earnings. Remaining weeks at the statutory rate or 90% of employee's weekly earnings if this is lower.	£172.48	£184.03
Statutory paternity pay (SPP) Statutory rate or 90% of employee's weekly earnings if this is lower.	£172.48	£184.03
Statutory parental bereavement pay (SPBP) Statutory rate or 90% of employee's weekly earnings if this is lower	£172.48	£184.03

Statutory sick pay

Payment	From 6 April 2023	From April 2024 (proposed)
Statutory sick pay	£109.40	£116.75
Lower earnings limit (per week)	£123	£123

Compensation award for unfair dismissal a year's salary mostly
Statutory redundancy pay £643 pw

Minimum auto-enrolment contributions

Timing	Minimum total percentage to be paid into pension	Minimum employer contribution	Minimum employee contribution
6 April 2018 – 5 April 2019	5 per cent	2 per cent	3 per cent
6 April 2019 onwards	8 per cent	3 per cent	5 per cent

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