DOYLE CLAYTON
Workplace Lawyers

Looking ahead to 2024

Contents

EU Law in 2024 and beyond

The Retained EU Law (Revocation and Reform) Act 2023 took effect on 1 January 2024 and ends the supremacy of EU law in the UK from that date. This means that UK legislation will have priority over retained direct EU legislation in the event of conflict between the two, and courts and tribunals will no longer have to interpret UK legislation in line with the wording and purpose of the underlying EU directive. The Act also abolishes the general principles of EU law, unless saved by new domestic legislation.

In addition, UK courts and tribunals will have greater discretion to depart from retained EU case law, with lower courts and tribunals able to refer questions to a higher court on whether to depart from previously binding case law.

The Act also preserves all EU derived employment laws set out in secondary legislation (Regulations) and gives the Government wide powers to revoke, restate or vary any retained EU law. So far, the Government has exercised these powers in the following areas:

- Holiday rights
- Equality Act 2010
- TUPE consultation requirements
- Working time record keeping

EU Law in 2024 and beyond

Holiday rights

Regulation 13 of the Working Time Regulations 1998 implements the four-week minimum holiday entitlement required by the EU Working Time Directive, and Regulation 13A provides for an additional 1.6 weeks' UK holiday entitlement. The Government has decided to maintain these two distinct pots of annual leave, with different rights applying to each, both in terms of whether and when the holiday can be carried over into a subsequent leave year and what elements of remuneration must be included when calculating holiday pay. The Working Time Regulations 1998 have been amended from 1 January 2024 so that pay for the Regulation 13 four-week holiday entitlement must include:

- payments, including commission payments, which are intrinsically linked to the performance of tasks which the worker is contractually obliged to carry out;
- payments for professional or personal status relating to length of service, seniority or professional qualifications; and
- other payments, such as overtime payments, which have been regularly paid to the worker in the previous 52 weeks.

This is intended to reflect EU case law and the requirement for workers to be paid their normal remuneration when taking their four-week Regulation 13 holiday entitlement. During the additional 1.6 weeks' entitlement under Regulation 13A, employers may generally choose to pay basic pay only (although many employers choose not to differentiate between the two sets of leave and pay their workers their normal remuneration for the full 5.6 weeks).

EU Law in 2024 and beyond

Workers' rights to carry over untaken holiday, where they have been unable to take it, are preserved as follows:

- Workers may carry forward into the following leave year:
  - their full 5.6 weeks' statutory holiday, where they have been unable to take it due to being on maternity leave or other family leave;
  - their four weeks' Regulation 13 holiday, where they have been unable to take it due to being on sick leave. However, they must take it within 18 months of the end of the leave year in which the entitlement originally arose.

Workers may carry forward any untaken leave from their four-week Regulation 13 entitlement if their employer:

- does not recognise their right to annual leave or paid annual leave (because, for example, they have been wrongly classed as a self-employed independent contractor);
- does not give them a reasonable opportunity to take leave or encourage them to do so; or
- does not warn them of the risks of losing their annual leave entitlement at the end of the holiday year.

Holidays may not be carried forward beyond the end of the first full leave year in which the employer observes these rights.

The Government is also changing the way in which holiday accrues for irregular hours and part-year workers and allowing employers to pay rolled up holiday pay to such workers for holiday years beginning on or after 1 April 2024.

Government guidance on the holiday reforms can be viewed here.

Action points

- Check you are calculating and paying holiday pay correctly
- Check those you classify as independent contractors are genuinely self-employed and, so, are not entitled to paid holiday
- Make sure your employment contracts, holiday policies and communications with workers encourage them to take their holiday in the holiday year in which it accrues, and warn of the risk of losing untaken holiday at the end of the leave year
- Consider whether you wish to specify in employment contracts and holiday policies the order in which leave is taken so that it is clear which rights apply when a worker is taking leave (in terms of pay) or seeking to carry over untaken leave. This is particularly important following the recent decision in Agnew v Chief Constable of Northern Ireland, where the Supreme Court ruled that different types of leave are not necessarily taken in sequence (Regulation 13 leave first, Regulation 13A leave next and any extra contractual entitlement last) and that, if it's not practical to distinguish between them, all of a worker's leave forms part of a single composite pot.

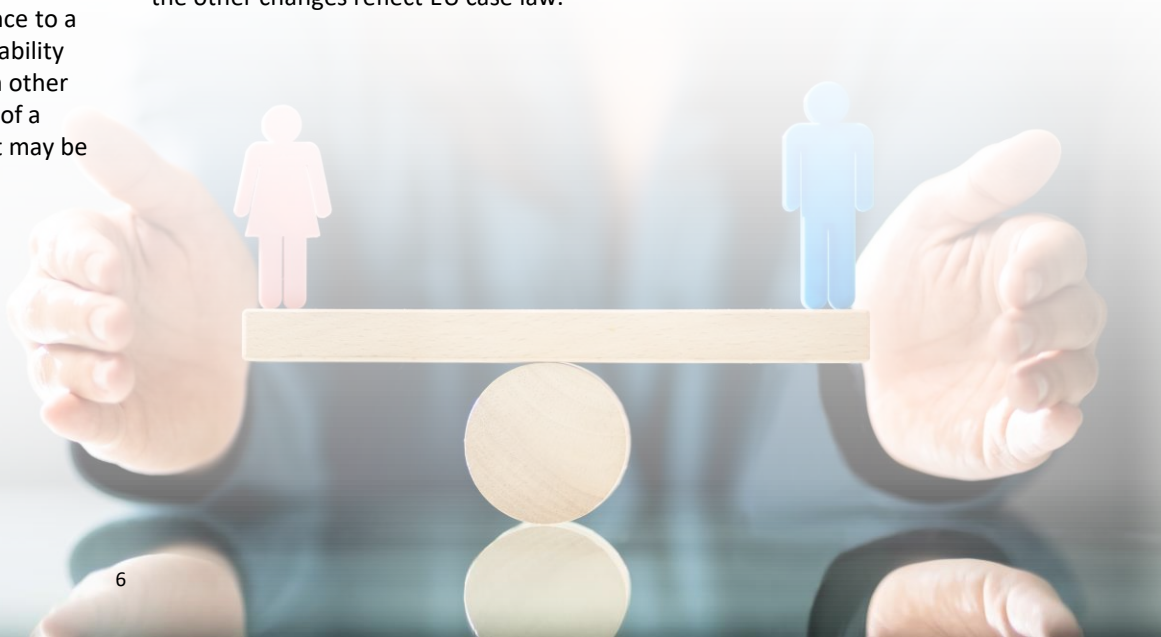
EU Law in 2024 and beyond

Equality Act 2010

The Equality Act 2010 has been amended from 1 January 2024, again in order to preserve EU law, so that:

- In equal pay claims, a comparison may be made where a single body is responsible for setting or continuing the terms on which the claimant and their comparator are employed, and which is in a position to ensure equal treatment between them. The amendment means there is no need for the claimant and comparator workers to have the same or an associated employer. In addition, a comparison will be permitted where the terms on which the claimant and their comparator are employed are governed by the same collective agreement;
- Indirect associative discrimination remains unlawful. It will be possible to establish indirect discrimination if a provision, criterion or practice puts, or would put, the claimant at 'substantively the same disadvantage' as persons who share a relevant protected characteristic (even though the claimant does not themselves have that relevant protected characteristic);
- The definition of disability is expanded to make it clear that the reference to a person's ability to carry out normal day-to-day activities includes their ability to participate fully and effectively in working life on an equal basis with other workers. This makes it clear that work-related activities may form part of a person's normal day to day activities and their ability to carry them out may be taken into account when determining whether they are disabled;
- Special treatment afforded in connection with maternity (as well as in connection with pregnancy and childbirth) does not amount to sex discrimination against men;
- Less favourable treatment because a woman is breastfeeding amounts to direct sex discrimination;
- It is unlawful pregnancy/maternity discrimination to treat a woman unfavourably after the end of her maternity leave because of her pregnancy or because of pregnancy-related illness suffered during the protected period (being the period of her pregnancy and maternity leave); and
- It is possible to bring pregnancy/maternity discrimination claims where an employee does not have a statutory right to maternity leave but has an equivalent right granted by a contractual or statutory scheme.

The change to equal pay comparators reflects Article 157 of the EC Treaty and the other changes reflect EU case law.



EU Law in 2024 and beyond

TUPE 2006 consultation requirements to change

Changes to TUPE consultation requirements will apply to business transfers and service provision changes taking place on or after 1 July 2024.

Currently, employers must inform and consult with appropriate representatives of affected employees about a TUPE transfer and, if there are no appropriate representatives in place, they must arrange elections. However, micro-businesses employing fewer than 10 employees are allowed to inform and consult directly with the affected employees where there are no existing appropriate representatives in place. This flexibility is being extended to small businesses (those employing fewer than 50 employees), and to all businesses where fewer than 10 employees are transferring, again, provided there are no existing appropriate representatives in place.

Working time record keeping obligations clarified

Employers are required to keep records which are adequate to show that the employer is complying with working time limits. The Working Time Regulations 1998 have been amended from 1 January 2024, to clarify that employers do not need to record each worker's daily working hours if they are otherwise able to show compliance with the 48-hour average working time limit and the young worker and night worker limits on the duration of working time.

The changes are intended to reverse a European Court ruling that indicated employers had to keep a record of each worker's daily working hours.

Action points

- Check your working time records are adequate to show that you are complying with the 48-hour average working time limit and the young worker and night worker limits.

Sexual harassment

New statutory duty on employers to prevent sexual harassment

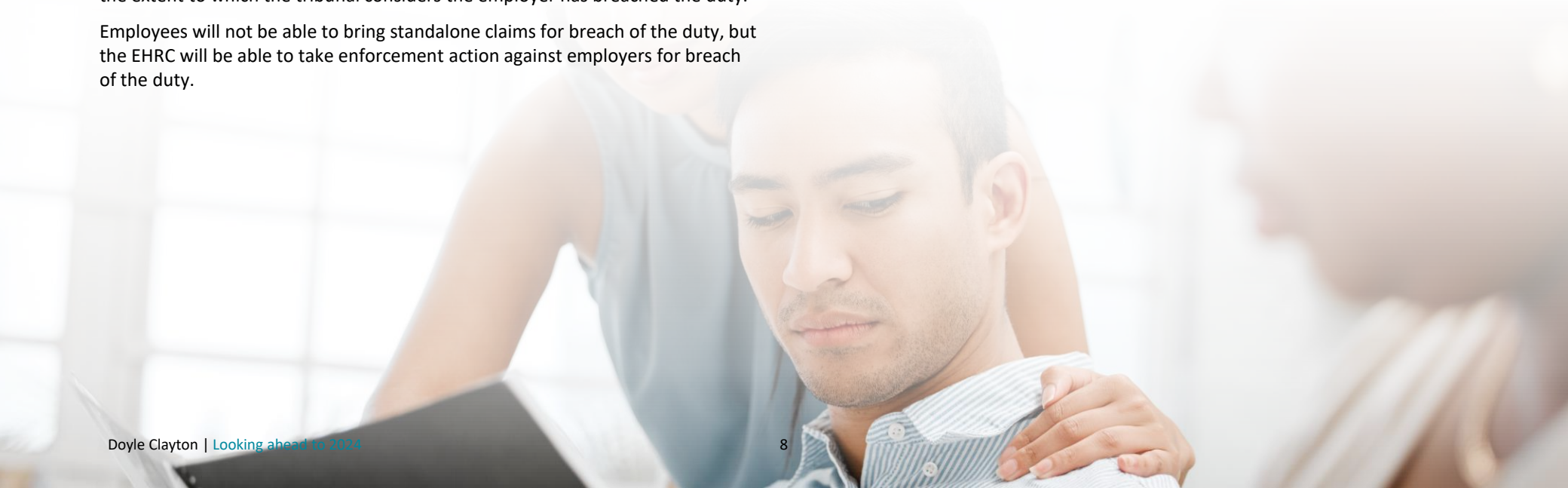
A new statutory duty on employers to take reasonable steps to prevent sexual harassment of their employees, in the course of their employment, is expected to come into force in October 2024. To help employers comply with the statutory duty, the Equality and Human Rights Commission (EHRC) will be producing a Statutory Code of Practice on sexual harassment in the workplace which will be subject to consultation before it comes into force.

Sexual harassment occurs where a person engages in unwanted conduct of a sexual nature that has the purpose or effect of violating an individual's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. Once the new duty is in force, where an employment tribunal finds that sexual harassment has taken place, it will then have to consider whether the employer has failed to comply with the new statutory duty to prevent sexual harassment. If satisfied that it has failed to comply, the employment tribunal will have the power to increase sexual harassment compensation by up to 25%. The amount of the compensation uplift must reflect the extent to which the tribunal considers the employer has breached the duty.

Employees will not be able to bring standalone claims for breach of the duty, but the EHRC will be able to take enforcement action against employers for breach of the duty.

Action points

- Review your sexual harassment policy in light of the EHRC Code, once finalised
- Refresh sexual harassment training and run it regularly
- Ensure sexual harassment complaints are investigated properly and resolved
- Make sure a senior person has responsibility for discrimination and harassment issues, and for overseeing your harassment policies and procedures.



Flexible working

Flexible working rights to be extended

The statutory right to request flexible working gives employees the right to request a change to their contract relating to the hours they work, the times when they work or where they work. Employers must deal with flexible working requests in a reasonable manner and the Acas statutory Code of Practice makes recommendations for employers regarding how to deal with requests. Employment tribunals may take the Code of Practice into account when deciding complaints, and employers may only refuse a statutory flexible working request on one of eight statutory grounds.

Changes are being made to the statutory right; from 6 April 2024, employees will be able to make a flexible working application from the first day of their employment. The current requirement to have 26 weeks' continuous employment will not apply to applications made on or after that date.

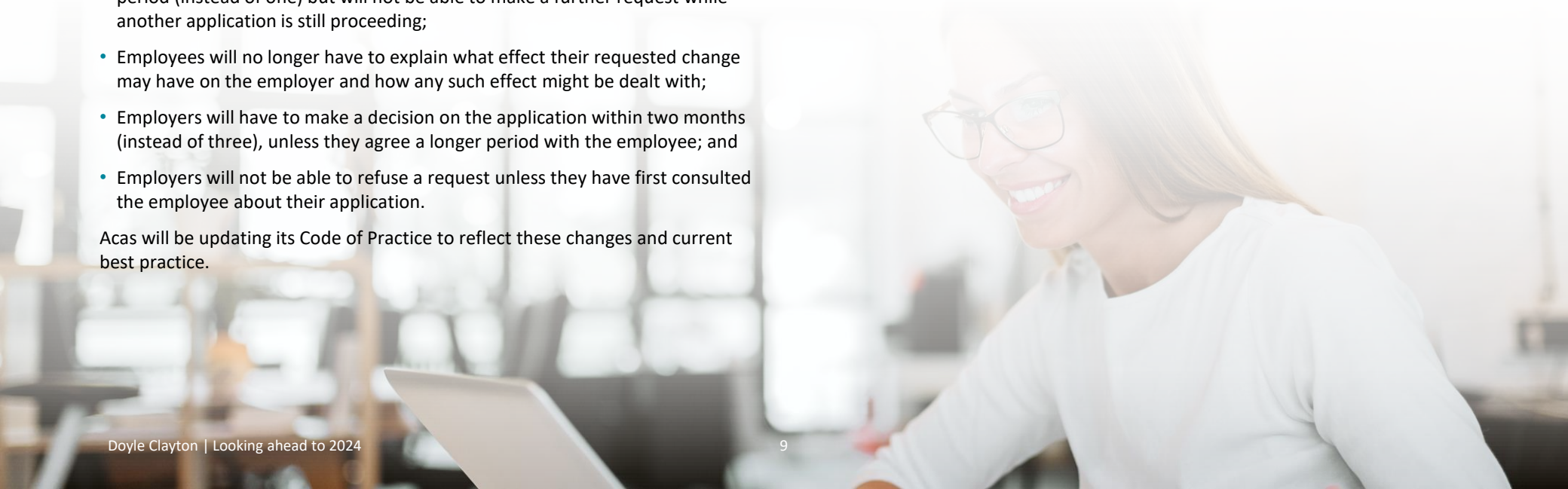
Other changes to the right to request flexible working are being made as follows:

- Employees will be able to make two flexible working requests in any 12-month period (instead of one) but will not be able to make a further request while another application is still proceeding;
- Employees will no longer have to explain what effect their requested change may have on the employer and how any such effect might be dealt with;
- Employers will have to make a decision on the application within two months (instead of three), unless they agree a longer period with the employee; and
- Employers will not be able to refuse a request unless they have first consulted the employee about their application.

Acas will be updating its Code of Practice to reflect these changes and current best practice.

Action points

- Update flexible working policies so they reflect these changes in readiness for 6 April 2024
- Train managers so they are aware of the changes and know how to deal with requests appropriately
- Familiarise yourselves with the amended Code of Practice and build this into your procedures for dealing with requests.



Atypical workers

New right to request a more predictable working pattern

From around September 2024, workers will have a new right to request a more predictable working pattern.

The right will apply where:

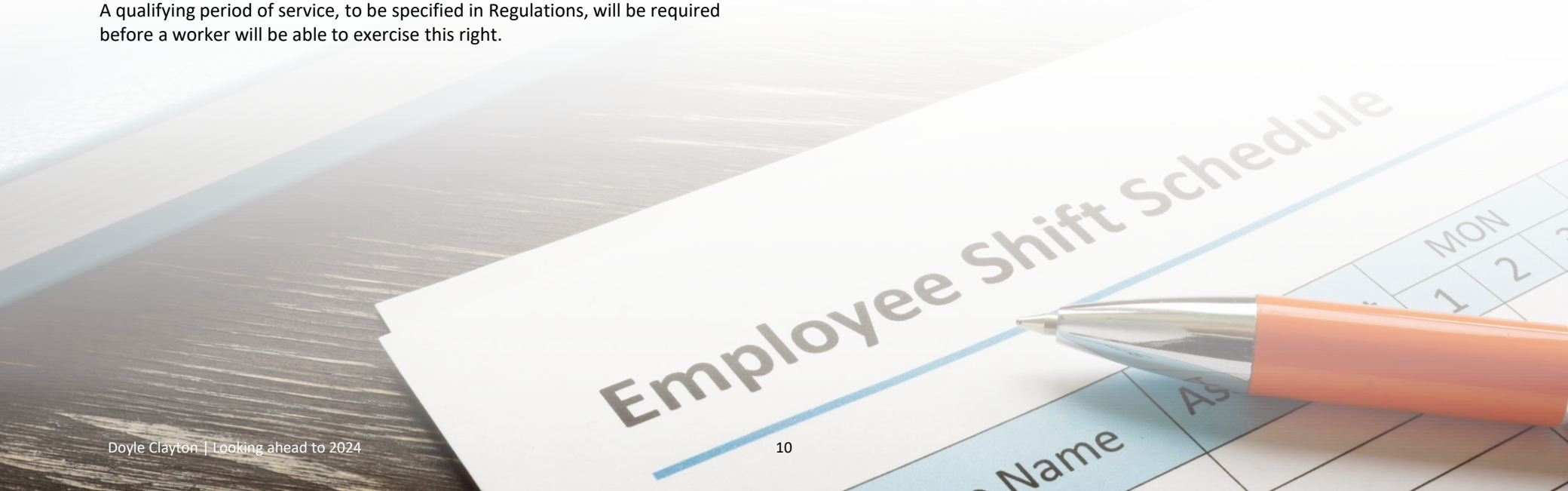
- There is a lack of predictability in relation to the worker's work, as regards any part of the worker's work pattern (the number of hours they work, the days of the week or times of the day they work, or the period they are contracted to work);
- The change relates to the worker's work pattern; and
- The worker's purpose in applying for the change is to get a more predictable work pattern.

Where a worker's contract is for a fixed term of 12 months or less, their period of work is deemed to lack predictability, enabling them to apply for either a longer fixed term or removal of the fixed term altogether.

A qualifying period of service, to be specified in Regulations, will be required before a worker will be able to exercise this right.

A worker's application will have to state that it is an application for a more predictable work pattern, specify the change applied for and the date when the proposed change should take effect. Employers will have to deal with the application in a reasonable manner, notify the worker of their decision within one month of the application and will only be able to refuse an application on one of the following grounds:

- Burden of additional costs;
- Detrimental effect on ability to meet customer demand;
- Detrimental impact on the recruitment of staff;
- Detrimental impact on other aspects of the employer's business;
- Insufficiency of work during the periods the worker proposes to work;
- Planned structural changes; and
- Such other grounds as may be specified in Regulations.



Atypical workers

Employers will have to consider an application, even if the worker ceases to be employed during the one-month decision period. In such cases, the employer will also be able to refuse the request on the ground that:

- The worker has terminated the contract (except where the worker was entitled to terminate without notice due to the employer's conduct); or
- The employer terminated the contract fairly, i.e., for a potentially fair reason (capability, conduct, redundancy, breach of a statutory duty/restriction or some other substantial reason) and acted reasonably in treating that reason as a sufficient reason for terminating the contract.

Acas is consulting on a statutory code of practice which outlines a recommended procedure for dealing with requests, including convening a meeting to discuss the request, allowing the worker to be accompanied, and allowing the worker to appeal if the application is rejected.

Employers will be able to notify a worker that they are treating an application as withdrawn if:

- Without good reason, the worker fails to attend both the meeting arranged to discuss the request and a rearranged meeting; or
- The employer has allowed the worker to appeal against the rejection of their request and, without good reason, the worker fails to attend both the meeting arranged to discuss the appeal and a rearranged appeal meeting.

Where an employer grants a request for a more predictable work pattern, they must offer the worker a new contract within two weeks, with terms and conditions that, taken as a whole, are no less favourable than the terms that applied at the time they made the application, and which reflect the change applied for.

Atypical workers

Workers will be able to make a maximum of two statutory applications in any 12-month period in order to improve the predictability of their work pattern – whether the application is made under this new statutory procedure or as a flexible working request. Employees will additionally be able to make a maximum of two flexible working requests, provided that these requests are not made for the purpose of improving predictability of their work pattern. No application may be made while another application is proceeding.

A worker who has made an application under the statutory procedure will be able to bring an employment tribunal claim if:

- The employer has failed to deal with their application in a reasonable manner;
- The employer has failed to notify them of its decision within the one-month decision period;
- The employer rejected the application for a reason other than one of the statutory grounds;
- The employer's decision to reject the application was based on incorrect facts;
- The employer, having granted the application, failed to offer a new contract in accordance with the statutory requirements; and
- The employer treated the application as withdrawn, but neither of the grounds for doing so applied.

If the claim is successful, the employment tribunal can order the employer to reconsider the application and/or order it to pay compensation of such amount as it considers just and equitable, subject to a maximum sum to be prescribed in Regulations.

In addition, workers (including employees) will be protected from detrimental treatment on the ground that:

- They brought proceedings on any of the above grounds;
- They alleged the existence of any circumstance which would constitute such a ground for bringing proceedings; or
- They have made or proposed to make a request for a predictable work pattern.

Any dismissal of an employee or selection for redundancy on any of the above grounds will be automatically unfair and no qualifying period of employment will be needed to bring a claim.

Action points

- Consider whether to introduce a policy dealing with the new right and how this will dovetail with your flexible working policy
- Make sure managers are aware of the new right and provide training on how to deal with requests
- Watch out for the Acas Code of Practice and build its recommendations into your policies and practices.

Atypical workers

Holiday for irregular hours and part-year workers

For leave years starting on or after 1 April 2024, there will be a new holiday accrual system for irregular hours and part-year workers; they will no longer be entitled to 5.6 weeks' holiday each year. Instead, their holiday will accrue at the end of each pay period at the rate of 12.07% of the number of hours worked in that pay period, subject to a maximum of 28 days' holiday. There are also special rules dealing with accrual where a part-year or irregular hours worker is on sick leave, maternity or other statutory leave. In such cases, an average over a 52-week reference period will be needed to calculate holiday accrual.

A person will be an irregular hours worker, in relation to a leave year, if, under the terms of their contract, the number of paid hours that they will work in each pay period during the term of their contract in that year is wholly or mostly variable.

A person will be a part-year worker in relation to a leave year if, under the terms of that contract, they are required to work only part of the year and there are periods within that year of at least a week which they are not required to work and for which they are not paid. This could, for example, cover a peripatetic teacher, an exam invigilator etc. Periods of sick leave or statutory leave (such as maternity leave) are ignored.

Employers will also be able, if they wish, to use rolled up holiday pay for irregular hours and part-year workers. This enables them to add holiday pay on to the basic rate of pay which the worker receives when working and then the worker is paid nothing when they take holiday. Employers will be able to pay rolled up holiday pay to irregular hours and part-year workers (as defined above) provided that:

- The holiday pay is calculated as a 12.07% uplift to the worker's total pay for work done;
- The extra 12.07% is paid at the same time as pay for the work done; and
- The holiday pay is itemised separately on the payslip.

Government guidance on these changes can be viewed here.

Action points

- Identify any irregular hours and part-year workers in your organisation and agree the contractual changes needed to reflect the new accrual system
- Consider whether you wish to use rolled up holiday pay and, if so, you will need to agree this with workers
- Update your holiday policy. You may wish to have a separate policy for irregular hours/part-year workers.

Family friendly changes

Additional redundancy protection for parents

The current right for employees on maternity, adoption or shared parental leave, to be offered a suitable available vacancy in a redundancy situation, is set to be extended from 6 April 2024.

In respect of pregnancy and maternity leave, the protection will apply from the time the employee informs their employer of their pregnancy and will continue until 18 months after the expected week of childbirth, or, where the employee has informed the employer of the date of their child's birth, 18 months after that date. Where an employee is not entitled to statutory maternity leave, protection will end two weeks after the end of the pregnancy.

In the case of adoption, the protection will apply for 18 months after the child's placement (or the date they enter Great Britian, in the case of overseas adoptions).

In the case of shared parental leave, those taking six or more consecutive weeks of shared parental leave, but who have not taken maternity or adoption leave, will be protected for 18 months after the date of the child's birth or placement (or date they enter Great Britain).

Where the protection is in respect of pregnancy, the new rules will apply where the employee notifies their employer of their pregnancy on or after 6 April 2024. Otherwise, the new rules will apply where maternity or adoption leave ends on or after 6 April 2024, or where a period of six consecutive weeks' shared parental leave starts on or after 6 April 2024.

Action points

- Maternity, adoption and shared parental leave policies which deal with the right to be offered a suitable available vacancy will need updating to reflect these changes
- Ensure these new rights are built into your redundancy processes.

Family friendly changes

New right to carer's leave

A new statutory right to carer's leave will come into force on 6 April 2024. Employees will be able to take one week's unpaid leave in each 12-month rolling period in order to provide or arrange care for a dependant with a long-term care need.

An employee's dependants covered by the new right are their spouse, civil partner, child or parent, someone who lives in the same household as them (other than a lodger or tenant) or who reasonably relies on them for care. A dependant will be regarded as having a long-term care need if they have an illness or injury that requires or is likely to require care for more than three months, if they are disabled for the purposes of the Equality Act 2010, or if they require care for a reason relating to old age.

Employees will be able to take the leave in whole days or half days and leave does not have to be taken on consecutive days. In terms of giving notice of leave, employees will have to give twice as many days' notice as the period of leave they wish to take, subject to a minimum of three days' notice. This notice does not have to be in writing and employers cannot require an employee to provide evidence in relation to their request.

Employers may postpone a period of leave if they reasonably consider that the operation of their business would be unduly disrupted by the employee taking leave during the period identified in the notice. If that is the case, they must allow the employee to take an equivalent period of leave beginning on a date specified by the employer, after consulting with the employee, which must be within a month of the start of the period of leave initially requested. Employers must give the employee written notice of the postponement as soon as reasonably practicable and in any event within seven days of the initial request, giving the reason for the postponement and the agreed dates on which leave can be taken.

During carer's leave, employees will be entitled to the benefit of all terms and conditions of employment which would have applied had they not been absent, apart from their wages/salary, and will remain subject to all of their usual employment obligations. Upon return from leave, they will be entitled to return to the same job on no less favourable terms and conditions with their seniority, pension and other rights unaffected.

Employees will be protected from detriment and dismissal attributable to the fact that they took or sought to take carer's leave.

Where an employee has a contractual right to take carer's leave, they will not be able to exercise the statutory right separately but may take advantage of whichever entitlement is more favourable and will still benefit from the protection of the statutory scheme.

Action points

- Consider drafting a carer's leave policy so that employees understand the new right and how they can exercise it
- Train managers so that they understand the new right and the protections that go with it.

Family friendly changes

Changes to paternity leave

Changes to paternity leave will come into force on 6 April 2024 to give employees greater flexibility when taking paternity leave. Fathers and partners will be able to take their paternity leave as two non-consecutive blocks of one week, rather than having to take leave as one block of either one or two weeks. They will also be able to take their leave at any point in the first year after the child's birth/adoption, rather than having to take it within the first eight weeks. In order to take leave, employees will only have to give 28 days' notice prior to each period of leave. This contrasts with the current position where employees have to decide by the 15th week before the Expected Week of Childbirth, whether they wish to take one or two weeks' leave when the child is born and when they want their leave to start. There will be no change to the notice requirements in adoption cases, where employees will still have to give notice within seven days of the adopter receiving notice that they have been matched with a child. Employees will also be able to change their paternity leave dates by giving their employer notice at least 28 days before their leave was originally due to begin or before the rearranged period of leave is due to start, whichever is earlier (or if that is not reasonably practicable, as soon as is reasonably practicable).

The changes will take effect in relation to children whose expected week of childbirth is after 6 April 2024 and children whose expected date of placement for adoption is on or after 6 April 2024.

Action points

- Update paternity leave policies to reflect the changes.

Industrial action

Minimum service levels

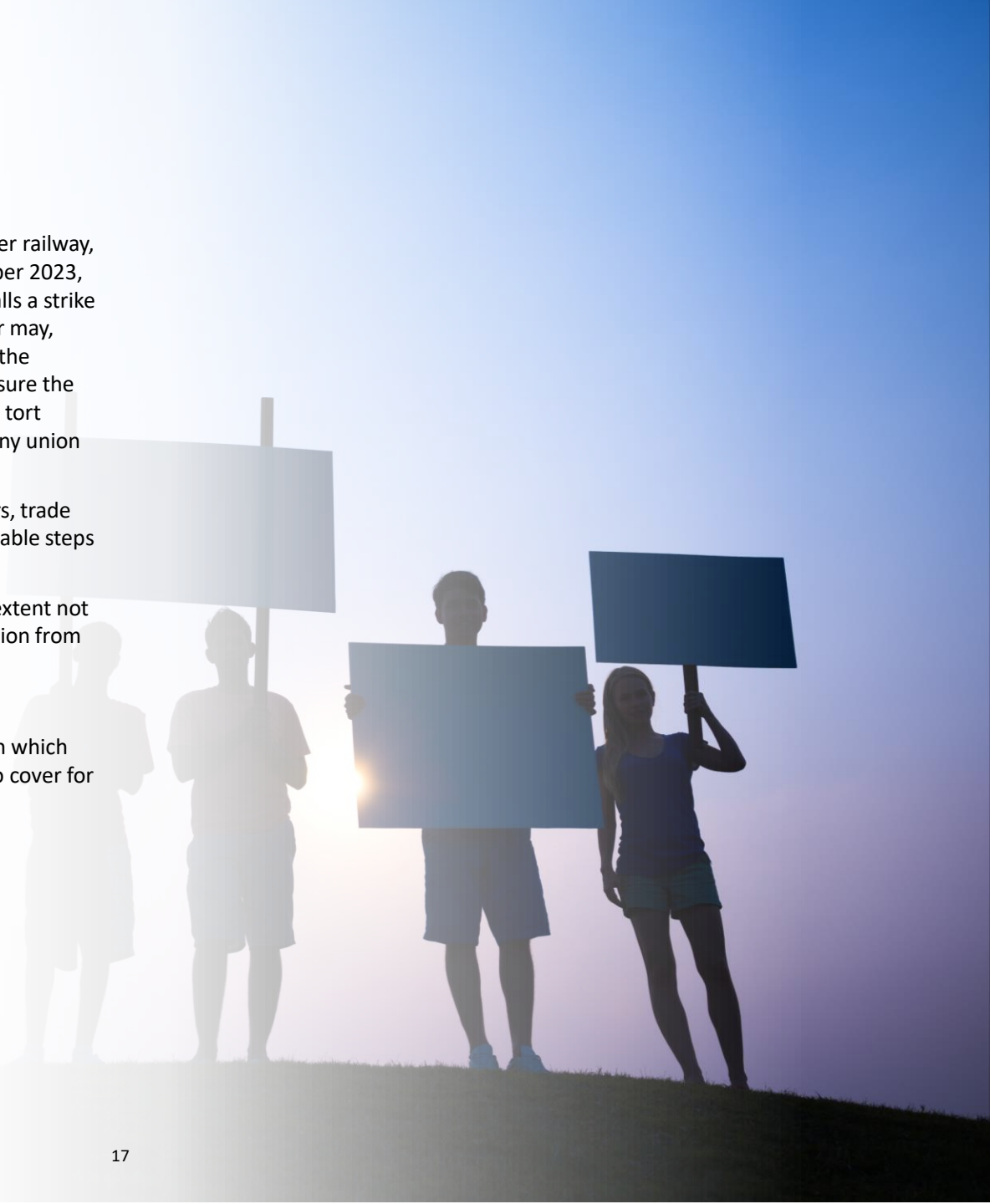
Legislation setting minimum service levels during strikes in passenger railway, border security and ambulance services, came into force in December 2023, with other sectors, including education, to follow. Where a union calls a strike in a service where a minimum service level is in place, the employer may, after consulting the union, give the union a work notice identifying the workers that are required to work and the work they must do to ensure the minimum service level is met. The union will lose its immunity from tort liability if it fails to take reasonable steps to ensure compliance by any union members identified in the work notice.

The Government has issued guidance on work notices for employers, trade unions and workers, and a Statutory Code of Practice on the reasonable steps a trade union should take to comply with the legislation.

If a worker identified in a work notice takes part in the strike to an extent not permitted by the work notice, they will lose their automatic protection from dismissal.

Using agency workers during industrial action

The Government is also consulting again on repealing the legislation which prohibits employment businesses from supplying agency workers to cover for workers taking part in industrial action.



National Minimum Wage increases

Increases from 1 April

Employers will have to pay the higher rate of the National minimum Wage, known as the National Living Wage, to all workers aged 21 and over from 1 April 2024. Currently the National Living Wage is payable to those aged 23 and over. At the same time, the rates will increase as follows:

- National Living Wage (21 and over): £11.44 (9.8% increase);
- 18-20 year old rate: £8.60 (14.8% increase);
- 16-17 year old rate: £6.40 (21.2% increase);
- Apprentice rate: £6.40 (21.2% increase); and
- Accommodation offset: £9.99 (9.8% increase).

Other things to look out for

Draft Code of Practice on dismissal and re-engagement

The Government plans to introduce a Statutory Code of Practice on dismissal and re-engagement, setting out employers' responsibilities when seeking to change terms and conditions of employment through dismissal and re-engagement, commonly known as "fire and rehire". It consulted on a draft code of practice in 2023 and confirmed that its consultation response, along with the final version of the Code, will be published in Spring 2024.

The Code will be admissible in evidence in proceedings before a court or employment tribunal, and any provision of the Code relevant to those proceedings will have to be taken into account by the court or tribunal. In addition, an employment tribunal may increase/decrease an award by up to 25% where an employer/employee unreasonably fails to comply with the Code.

Although not certain, it seems likely that the Code of Practice will come into force on 6 April 2024.

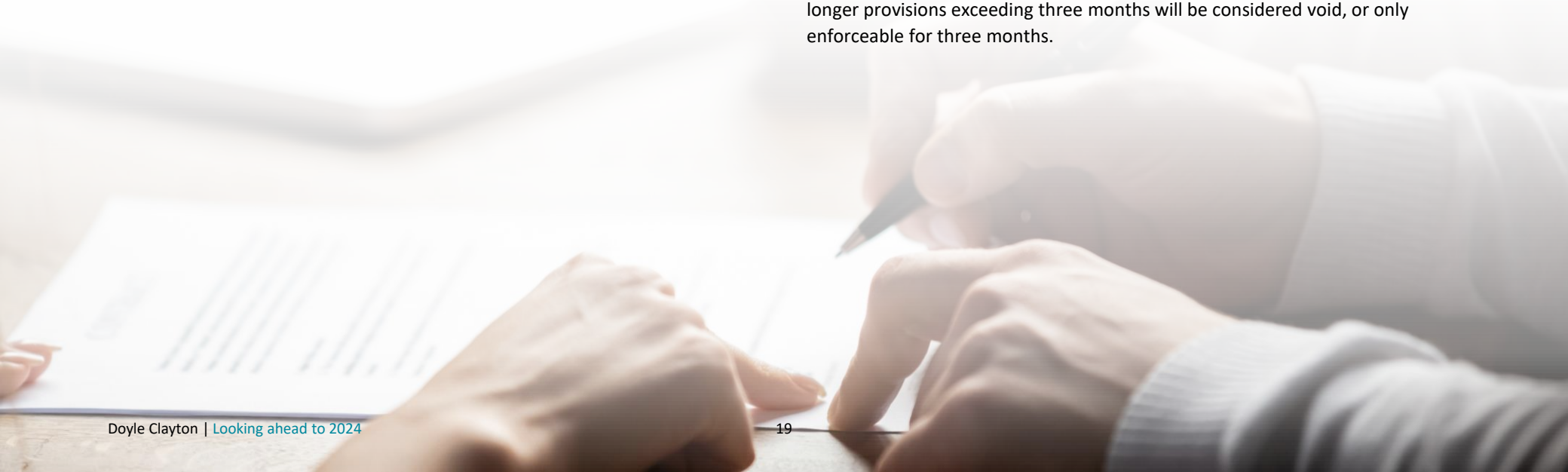
Limit on the length of non-compete clauses

It is unclear whether the Government's proposal to implement a three-month limit on the duration of non-compete clauses will come into force in 2024. The Government announced its proposal in a consultation response back in May 2023 and indicated that it would legislate "when parliamentary time allows".

If introduced, the three-month limit will apply to non-compete clauses in employment and worker contracts, but not in wider workplace contracts, such as partnership, LLP and shareholder agreements. The limit will not apply to other types of post-termination restrictions, such as non-solicitation, non-dealing and non-poaching clauses.

When considering whether a non-compete clause of three months or less is enforceable, the normal common law principles of enforceability will continue to apply, and the starting-point will be that the clause is unenforceable unless shown to be reasonable.

It is not clear whether the three-month limit will apply to all non-compete clauses, or only those entered into after the legislation is in force and whether longer provisions exceeding three months will be considered void, or only enforceable for three months.



Other things to look out for

New failure to prevent fraud offence

The Economic Crime and Corporate Transparency Act 2023 received Royal Assent on 26 October 2023. The Act introduces a failure to prevent fraud offence and imposes criminal liability on a large organisation that fails to prevent fraud intended to benefit the organisation. There is a defence if adequate procedures are in place to prevent fraud, and adequate procedures guidance will be published before the changes come into force. It is not clear when the changes will be in force.

Pensions auto-enrolment

The Pensions (Extension of Automatic Enrolment) Act 2023 received Royal Assent on 18 September 2023. When in force, the Act will give the Secretary of State the power to decrease the age at which employers will have to enrol workers into a workplace pension scheme. The Government intends to use this power to reduce the lower age limit from 22 to 18. The Government will also be given the power to reduce or remove the lower end of the qualifying earnings band for auto-enrolment.

Neonatal care leave and pay

The Neonatal Care (Leave and Pay) Act 2023 received Royal Assent on 24 May 2023. When in force, it will create a new right to take neonatal care leave, expected to be capped at 12 weeks' leave (with no qualifying period of service required). There will also be a right to receive statutory neonatal care pay after 26 weeks' continuous employment, subject to meeting the minimum earnings tests applicable to other types of family leave. The Government will set out further details in Regulations which we may see during the course of 2024, but the new rights are not expected to be in force until April 2025.

Judgments to look out for

We can expect to see the following judgments from the courts and tribunals:

The Supreme Court's decision in Union of Shop, Distributive and Allied Workers & Ors v Tesco Stores Ltd

The Supreme Court will consider whether Tesco was precluded from using "fire and rehire" in order to remove a contractual entitlement to enhanced pay, described as a "permanent feature" of the employment contract. The High Court's decision to grant an injunction to prevent Tesco doing so was overturned by the Court of Appeal. The case is due to be heard by the Supreme Court on 24 April 2024.

The Employment Appeal Tribunal's decision in British Bung Manufacturing Company Ltd and another v Finn

The appeal was heard on 28 November 2023 and judgment is awaited. The Employment Appeal Tribunal considered whether the employment tribunal was correct to rule that baldness, being much more prevalent in men than women, is inherently related to sex and that calling a man a bald c**t was harassment related to sex, in circumstances where the maker of the comment admitted that he had intended to threaten and insult the victim.

The Supreme Court's decision in Mercer v Alternative Future Group Ltd and another

The Supreme Court considered whether s146 Trade Union and Labour Relations (Consolidation) Act 1992 which prohibits detrimental treatment for taking part in trade union activities should be read as precluding detrimental treatment for taking part in a strike. The case was heard by the Supreme Court on 12 December 2023 and judgment is awaited.

The Employment Appeal Tribunal's decision in Accattatis v Fortuna Group (London) Ltd

The appeal was heard on 20 December 2023. The Employment Appeal Tribunal considered whether an employment tribunal was correct to find that an employee, dismissed after asking to be furloughed because he was uncomfortable commuting and attending the office during the COVID-19 lockdown, was not taking steps to protect himself from danger and so his dismissal was not automatically unfair (under section 100(1)(e) Employment Rights Act 1996).

The Employment Appeal Tribunal's decision in Dimitrova and others v Barchester Healthcare Ltd

The Employment Appeal Tribunal will consider whether a tribunal had been correct to dismiss unfair dismissal and religion/belief discrimination and harassment claims by care home workers dismissed when they refused to be vaccinated against COVID-19. The appeal is expected to be heard in early 2024.

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