

Employment law updates September 2024

You will have all heard some rumblings about the employment law changes that Labour will be making within their first 100 days in power. Below are the changes that are either certain to be coming, or highly likely, so please prepare for if and when these become passed in law:

Sexual Harassment at work – relevant now

As of 26th October 2024, the labour government are going to be passing a law relating to sexual harassment in the workplace. They have said that employers need to take ALL reasonable steps to prevent Sexual Harassment in the workplace. The word ALL is pretty much left open to interpretation by whichever judge is dealing with a case, which means there are no fixed ideas on exactly how to prevent Sexual Harassment in the workplace. The other difficulty is that this law will not just be governed by employment law, where an employment tribunal could be raised, but is also being covered by the Equality and Human Rights Commission, which means it would then be a criminal offense if employers don't take steps to prevent Sexual Harassment in the workplace, and that these cases could then be tried in a criminal court rather than a usual employment tribunal. Compensation claims in this court can be up to £150,000 per case. Very important to note, is that the employer or head of a company can be held personally liable, not just for the compensation claim, but also in worse case scenarios could face a jail sentence themselves for up to 6 months. This is so critical to understand and prepare for, particularly as the definition of feeling harassed is about how the victim feels and not how the perpetrator meant it to come across.

Equality Act (2010) breaches – relevant now

This part isn't new, but following on from the Sexual Harassment information above, it will be important for you to know that any breaches of the Equality Act in terms of the 9 protected characteristics could result in the same criminal court case action as detailed above, which means that the head of each organisation can be held personally liable for any breach of this. This is why the Equality and Diversity training, and Unconscious bias is also important as it goes into the protected characteristics in more detail and discusses the differences between direct discrimination, indirect discrimination, harassment and victimisation.

Menopause Policy – relevant now

Also, there is a requirement for larger companies to bring in a Menopause policy and ensure that they treat anyone suffering with the menopause in line with the policy which includes making reasonable adjustments. While menopause is not classed as a protected characteristic in its own right, it is however covered by all 3 protected characteristics of Age,

Disability and Sex, so you must ensure you have something set up. There is a menopause policy on the Parish HR website that you can adapt.

Employment Tribunal Claims – relevant now

You may also find it helpful to understand that where a breach has occurred whether it relates to the Equality Act or issues with not applying relevant law policies, if you are taken to an employment tribunal by your employee/ ex-employee, even if you win the case, it is highly unlikely that the court will order the claimant to pay your court costs. Therefore, when you get to this point, you will need to consider the cost benefit of going to a tribunal versus a settlement agreement, even if you believe it to be unfair or based on lies, you will still not get your legal fees etc refunded to you.

Currently, employees have three months to bring most claims before an employment tribunal. Labour plans to increase the time limit to six months, bringing it in line with the time limit for statutory redundancy and equal pay claims. Along with the unfair dismissal day 1 right, detailed below, this will affect how quickly employment tribunals are dealt with. This could end up being 4-5 years after the initial claim has been filed.

One thing that is really important is if you receive a claim form that someone has submitted a tribunal claim, whether or not you agree with what has been said, you absolutely must respond within the date on the form, even if you just say that you disagree with it. You can fully prepare to defend your case after this. If you don't respond to the original claim form, the judge will automatically rule against you even if you dispute it, and you will not be able to attend the hearing, nor defend your claim.

Mental Health at work – Relevant now

In the last year, the Health and Safety executive have been given more powers to look out for employees' mental health as well as physical health. The Health and Safety Executive can send representatives to your workplace to check on whether you are being health and safety compliant from a physical and mental health perspective.

For every breach of health and safety legislation, you could be fined £1500. The breaches could also amount to a criminal offense and as with breaches of the equality act, it is the head of the organisation which could be held personally liable for the fines and potential jail sentence. This is why it is so important that your organisation is fully compliant on both physical and mental health.

For physical health, it should be a case of you checking that nothing poses a risk and you should have a risk assessment done on your buildings in relation to potential risks your employees may face, including mental health risks. You can use this link to get the template that the HSE have provided [Risk assessment: Template and examples - HSE](#)

For mental health, you should ensure you conduct stress risk assessments with your staff and have personalised risk assessments for each person. You can use this link to access the stress risk assessments from the HSE website as they have provided templates for you to use [Work related stress - Tools and templates \(hse.gov.uk\)](https://www.hse.gov.uk/work-related-stress/tools-and-templates/)

Unfair dismissal being made a day 1 right – Date TBC

One of the things that the government is doing is removing the 2 year minimum employment term before someone can raise an unfair dismissal case. At the moment only those who have been discriminated against for having a protected characteristic can raise an unfair dismissal claim within this 2 year period. However when the government do release this policy, anyone can claim unfair dismissal from their first day of employment. The exception to this is when someone is in their probation period, so having a probation period is absolutely critical. At the DBF we have probation periods of 6 months, with the option to extend for a further 3 months if needed. Any probation period should be realistic to the role the employee is doing, for example a café worker may only need a 3 month probation period, whereas a senior employee may need a 6 month probation period. You should look at your employment contracts for new starters and make any changes. You should not make the probation period disproportionate to the role, therefore if you need any advice speak to Simone Smith, HR Advisor

Statutory sick pay changes – Date TBC

They plan to remove the current three-day waiting period and the lower earnings limit, making it available to all workers. They may also increase the amount of SSP payable to employees

Parental leave – Date TBC

Currently parents have the right to take up to 18 weeks of unpaid leave for each child until they are 18 years old, however there is a waiting time of 6 months employment before they can request this time off. Labour has committed to reviewing the parental leave framework within the first year of government and to making parental leave a day one right.

The right to request flexible working – Date TBC

This became a day one right on 6 April 2024. The government will go further, making it a day one right to flexible working (rather than a right to request flexible working), as far as is reasonable. They are also saying that all employees would have the right to request a 4 day working week made up of compressed hours (35 hours in 4 days rather than over 5 days). How this will look in practice I am not completely sure, because there are many businesses who would struggle to accommodate this requirement.

Working from home becoming a default right – Date TBC

The government are also planning on making “Work from Home” a default right in employment contracts, although we expect that there will be some debate on this, for example a store worker can't possibly work from home. Very few details have been released about this, but it is worth noting in case this is brought into law.

Workers right to switch off – Date TBC

This measure will give all workers the right to not be contacted by their employer outside of their working hours. If workers are contacted outside of work, this could be a breach of health and safety from a wellbeing perspective, and whilst the employee could raise a tribunal claim, if they report you to the Health and Safety Executive, you could face a fine of £1500 each time.

Workers would also benefit from new rights to be protected against remote surveillance. Any proposals by an employer to introduce surveillance technologies would be subject to consultation and agreement by trade unions or elected staff representatives.

Zero Hours contracts – Date TBC

A while ago the conservative government planned to bring in an act called “Workers predictable hours”. Labour have now scrapped that and have decided that they will limit how zero hours contracts can be used. Their original plan was a flat out ban on zero hours, but after some consultation have conceded that zero hours contracts do have their purpose if they are used correctly (for workers with irregular hours and who only work when needed). The government plan to ban “exploitative” zero hours contracts which is where someone regular works the same hours each week such as full time hours, but is on a zero hours contract. Some employers use this as a means to remove people from their business by dropping their hours, rather than going through a dismissal process or redundancy process, and it is this which Labour, want to stamp out.

Changes to employment status – Date TBC

At the moment there are 3 categories; Employee, Worker and Self-employed. Each term has its own rights and limitations, and the government want there to just be a single status called “worker” and genuinely self-employed people will be allowed to operate as such. This is to stop employers disadvantaging workers and those who they claim are self-employed, when they should probably be classed as employees. The main implication of this is that those who are technically self-employed but should be employees will then be given rights to sickness, leave, unfair dismissal etc.

Giving more power to Trade Unions – Date TBC

Employers will also be under a new duty to inform new starters of their right to join a trade union and to inform existing staff of this regularly. This means that it will need to be written in the employment contract for new employees when this act has been passed.

National Minimum Wage increases

The government are planning on just having one minimum wage for all workers over the age of 18, rather than the existing system where the minimum wage is different depending on age. They are also planning on ensuring that the increase is in line with the cost of living every year, but will also do a review on whether to increase the minimum wage as well. You should prepare any budgets or Finances with it in mind that these things might change next year. We do not know the costs however, so please keep a look out for any announcements on this.

Dismissals during pregnancy and after maternity leave – Date TBC – Possibly April 2025

Labour is also considering an outright ban on dismissing women who are pregnant, on maternity leave, or during their first 6 months of returning to work after maternity leave.

While the right to not be made redundant lasts for 18 month's after the baby's birth/adoption, the new neo-natal act which is due to come out potentially in April 2025, will also provide protection for anyone taking neo-natal leave, on top of their current 18 month protection from the baby's birth. This means that if their baby is in neo-natal care within the first 28 days of being born and stay there for 7 days, they are entitled to a further 12 weeks of neo-natal leave at a pay rate to be set by the government, which means that their protection from redundancy then becomes 30 months from the baby's birth.