



# UK Employment Law Update – November 2022

Welcome to our monthly newsletter, with a summary of the latest news and developments in UK employment law.

## In this issue:

- [Case law updates](#)
- [Legislative developments](#)
- [Other news](#)
- [New guidance](#)
- [Consultations](#)
- [Upcoming events](#)
- [Publications and on-demand recordings](#)
- [Podcasts](#)



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# Case law updates



**Redundancy:** Overturning the employment tribunal (ET)'s decision, the Employment Appeal Tribunal (EAT) has found that a nurse who was dismissed for redundancy on the basis that her fixed term contract was due for renewal before that of her colleagues (who were also on fixed term contracts) was unfairly dismissed. The EAT considered that using the fixed term contract expiry date as the sole criterion for redundancy selection, a decision adopted without any prior meetings or consultation, to be arbitrary and effectively put the claimant into a pool of one and made her redundancy a *fait accompli*. The case acts as a reminder of the importance of careful consideration of selection criteria and that meaningful consultation, including on the method of selection, is a key component of a fair redundancy process. (*Mogane v. Bradford Teaching Hospitals*)

**Settlement agreements:** The EAT has held that an ET was wrong to deny the claimant the ability to bring an age discrimination claim in circumstances where he had previously signed a settlement agreement waiving his rights. The claimant had accepted a redundancy package under a settlement agreement, but he subsequently brought a complaint of age discrimination when he was not paid a pension payment due to his age. This claim had not arisen at the time of his settlement agreement. While he had settled all future claims under contractual principles, the Equality Act 2010 does not allow for settlement of future claims which have not yet arisen. The case is a helpful reminder to take care when drafting waivers of claims in settlement agreements, and to be mindful that certain claims cannot be waived. (*Bathgate v. Technip*)

## Legislative developments

**Whistleblowing:** The *Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2022*, coming into effect on 15 December 2022, amends the statutory list of prescribed persons to whom disclosures can be made to gain protection under whistleblowing legislation. The amendments include widening the scope of matters to which the Financial Conduct Authority is a prescribed person.

**Pregnancy and maternity – redundancy:** The government has confirmed its backing to legislation that extends the rights of pregnant workers and new parents in redundancy situations. It is understood that the policy intention is to extend the right to priority for suitable, alternative vacancies to cover the period from when a woman tells her employer she is pregnant until 18 months after the birth. This same 18-month window is also expected to apply to maternity and shared parental leave. A timescale for implementation is unknown.

**Carer's leave:** The government has also confirmed its backing to legislation to introduce a day one right to a week's unpaid leave per year for workers with caregiving responsibilities. Again, the timescale for implementation is currently unclear.

**Industrial action:** The government is pressing ahead with its proposals to introduce legislation to ensure that minimum service levels are in place for transport so that industrial action does not make it impossible for people to travel to work. The *Transport Strikes (Minimum Service Levels) Bill 2022 (Draft)* was published on 20 October 2022 and will now make its way through the legislative process.

**Data protection:** The government has announced plans to replace the UK GDPR with bespoke data protection legislation. Details and a timescale are unknown.

# Other news

**Growth plan/budget:** In September 2022, the government (under former Prime Minister Liz Truss and former Chancellor Kwasi Kwarteng) made a number of announcements in respect of its economic agenda. However, following the market's reaction to those announcements, and a subsequent change in both the prime minister and chancellor, a number of the previously announced proposals have changed. As things currently stand:

- **National Insurance Contributions (NICs):** The 1.25 percentage point rise in NICs, which took effect from 6 April 2022, was reversed on 6 November 2022, and the Health and Social Care levy (which was going to replace the NIC increases from April 2023) remains cancelled.
- **Income tax:** The basic rate of income tax will remain at 20 per cent and will now not reduce to 19 per cent in April 2023. Similarly, the 45 per cent highest tax rate remains in place and will not be scrapped as previously announced.
- **IR35:** The IR35 reforms will now not be repealed from 6 April 2023. The status quo remains.
- **Banker bonuses:** The cap on bankers' bonuses is still being removed.

The government's autumn statement, anticipated to be a full budget, will be held on **17 November 2022**.

**Reporting requirements for smaller businesses:** On 3 October 2022, then Prime Minister Liz Truss announced proposed measures to widen the reporting requirements and 'other regulations' for smaller businesses by extending this to organisations with under 500 employees. The scope of this is unclear, and given the subsequent change in leadership, it remains to be seen if this proposal will be taken forward.

**Menopause:** An All-Party Parliamentary Group has issued its [report](#) following an enquiry into the impact of menopause at work. It recommends that the government take action to raise awareness, tackle the taboo of menopause, and update and promote guidance on best practices. This comes as Acas publishes results of a [survey](#) suggesting that one-third of employers do not feel well equipped to provide appropriate support.

**Business immigration:** The Home Office has issued a [statement of changes](#) to various immigration rules. The changes include revisions to the evidential requirements for arts and culture and digital and technology applications under the Global Talent route, a Service Supplier route from 9 November 2022 for Australian and New Zealand nationals who provide services covered by free trade agreements with the UK, and an extension of the Ukraine Extension Scheme.

**Artificial intelligence (AI):** A [study](#) by Cambridge University suggests that AI in recruitment is counter-productive and does not, as AI tools currently stand, remove bias. The study makes a number of recommendations, including: a need to consider broader inequalities in recruitment rather than individual bias; HR professionals using AI tools must understand the limitations; suppliers should explain where AI is used in their systems to evaluate candidates; and a need for further contribution and scrutiny by AI ethicists, regulators, and policymakers on AI-led HR technology. Employers using or interested in AI should also note the current consultation (see below).



# New guidance

**Settlement agreements – tax:** HMRC has issued [guidance](#) to help with the calculation of PAYE in settlement agreements.

**Shipping – hours of work:** A [Merchant Shipping Notice](#) has been published with details of mandatory requirements, and associated guidance, in the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018.

**Shipping – health and safety:** The [code of practice](#) for safe working practices for merchant seafarers has been updated following an annual review.

**Professional qualifications:** The department for Business, Energy & Industrial Strategy has issued new [guidance](#) for regulators in respect of the Professional Qualifications Act 2022, post-Brexit legislation dealing with the recognition of UK professional qualifications within the UK and abroad. Although the guidance is for regulators, it may be of interest to businesses of regulated professions.

# Consultations

**Brexit:** Last month we reported proposals to overhaul retained EU Law, with the Retained EU Law (Revocation and Reform) Bill passing through the legislative process. The Public Bill Committee is inviting [submissions](#) on the proposals by **22 November 2022** (although this date may be brought forward).

**Artificial intelligence:** An inquiry and [call for evidence](#) has been launched by the House of Commons Science and Technology Committee in respect of the governance of AI. Responses are required by **25 November 2022**.

**Workplace monitoring:** The Information Commissioner's Office (ICO) has issued [draft guidance](#) for employers on monitoring in the workplace. The ICO is inviting views on the content before **11 January 2023**.

**Workers' health:** The ICO has also produced [draft guidance](#) on information pertaining to workers' health, and is inviting views on the content by **26 January 2023**.

# Upcoming events

(Register using the link below)

[Let's talk gender, sex, identity and equity](#) – 8 December 2022

# Publications and on-demand recordings

- [Is a four-day working week the future for UK employers?](#)
- [Let's talk bias busting and microaggressions](#)
- [Let's talk privilege and allyship](#)
- [Let's talk building and developing diverse teams](#)
- [The Art of Leadership: Empowerment, resilience, and picking up the pieces](#)

# Podcasts

- [Autism acceptance and benefits of neurodiversity](#)
- [Why organizations need to be 'disability-confident'... and how to make that happen](#)
- [Disability inclusion: removing barriers to finding top talent](#)
- [How workplaces promote recovery by destigmatizing mental illness](#)

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