



# UK Employment Law Update – April 2024

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

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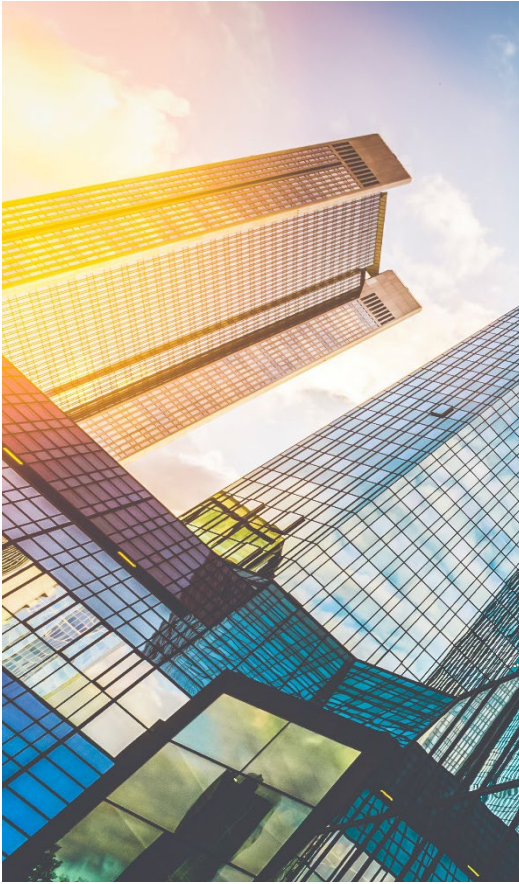
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April 2024 brings with it a number of significant employment law changes. In this month's update we detail the new financial limits, changes to redundancy protection, and new rights on maternity and family leave, working time and carer's leave.

## Case law updates

**Disability discrimination - reasonable adjustments:** The Employment Appeal Tribunal (EAT) has been considering the extent to which the duty to make reasonable adjustments includes offering an employee a trial period in a new role as an alternative to dismissal. In this case the claimant was no longer able to fulfil his field-based role due to his multiple sclerosis and applied for an administrative role in the same company, but when the recruiting manager concluded that he did not have the appropriate skills or experience for the new role, he was not offered the role or a trial period. He was subsequently dismissed for ill health. The claimant succeeded with claims for unfair dismissal, discrimination arising from dismissal and a failure to make reasonable adjustments in the Employment Tribunal (ET). The EAT dismissed the employer's appeal. On the reasonable adjustments point, it concluded that a trial period is capable of being a reasonable adjustment and there is no requirement that this is only offered where there is some likelihood of the trial being successful. In the EAT's view, wherever there is a substantial disadvantage (which is likely where there is an impending dismissal) adjustments to avert dismissal should be considered, and whether offering a trial period is reasonable will depend on the circumstances of each case. Employers faced with similar scenarios should carefully consider whether to offer a trial period and be prepared to justify why one is not offered where the role is one a disabled employee could carry out, even if they do not have existing skills or experience. ([Rentokil Initial UK Ltd v Miller](#))





**Discrimination - religion and belief:** In a case that was widely reported in the media, the EAT has upheld a decision that an actor cast in an iconic lesbian role was not discriminated against when her contract was terminated after a historic Facebook post about her belief that homosexuality was a sin resurfaced. Whilst the EAT was satisfied that her beliefs were protected, the discrimination claim failed because the reason for her contract being terminated was the adverse publicity caused by her social media posts and the impact this would have on the commercial success of the play. Her breach of contract claim also failed as she suffered no loss - she was paid her full fee, but also later admitted that having read the script she would not have agreed to play the role anyway. ([Omooba v Michael Garret Associates](#))

**Discrimination - time limits:** There are strict time-limits for bringing claims in the ET, although in discrimination claims the ET has jurisdiction to hear complaints that occurred outside the time-limit if it is part of a series of conduct extending over a period. The EAT has been considering the circumstances in which events are deemed linked for time limit purposes. In this case, the claimant's job was ceasing to exist due to a restructure and she was offered another role, at a lower grade, which she rejected. She went off sick and was ultimately dismissed on ill health grounds. She had also raised a grievance alleging age and disability discrimination. She brought various claims in the ET - only her dismissal was within the usual three-month time limit, but the ET allowed all her claims to proceed on the basis there has been conduct extending over a period of time. The EAT concluded that the ET had approached the issue of time-limits wrongly. For an extension based on a continuing conduct to apply, it was not sufficient for the grievance to be related to a protected characteristic. The conduct being relied on as continuing conduct must itself be discriminatory. As the failure to deal with the grievance properly and pre-determine the outcome was not discriminatory, it was not a valid basis for extending the time limit. The EAT also considered whether alleged discriminatory conduct extending over a period needed to relate to the same

protected characteristic or the same type of conduct, concluding that it did not. Whilst it may be more difficult to establish, conduct relating to different protected characteristics and/or a mixture of say harassment and direct discrimination, could be capable of being linked for time limit purposes. ([Worcestershire Health and Care NHS Trust v Allen](#))

**ET claims - evidence:** A claimant who won part with her claim has had her remedies hearing struck out for having destroyed, or lied about destroying, relevant notebook and mobile phone evidence, meaning it was no longer possible to have a fair trial. The EAT upheld this decision, noting that while strike out is a draconian step, in the circumstances it was both appropriate and proportionate to do so in this case, reminding parties of the importance of disclosure and preservation of evidence. ([Kaur v Sun Mark Ltd](#))

**ET claims - territorial jurisdiction:** In an interesting case exploring the territorial reach of UK employment law, the stewardess of a superyacht has been permitted to bring claims of unfair dismissal and discrimination in the ET despite there being a very limited connection to the UK. The superyacht never entered a UK port or UK waters during her employment. The employer was registered in Guernsey and was not carrying out any business in the UK. The employee's 'tours of duty' started outside the UK, and her salary was paid in Euros. However, the ET held it had jurisdiction to hear here claims because her home was in Aberdeen, and she was paid travel expenses between home and the superyacht. The ET concluded that Aberdeen was her 'base' and that her duties started and ended there. It was also relevant that her contract was expressed as being governed by the laws of England and Wales. ([Yacht Management Company Ltd v Gordon](#))

**Equal pay:** The material factor defence, i.e. that there is a material factor not linked to sex to explain the differential in pay between a claimant and their comparator, is often a key issue in equal pay claims. The EAT has been considering the extent to which a material factor defence will fail if the pay decision maker is not identified or fails to give evidence on the reasons for the pay difference, concluding that while there may be cases where evidence of the decision maker can be helpful to establish the reason for any pay disparity, it is not necessarily essential to enable the defence to succeed. ([Scottish Water v Edgar](#))

**Family leave:** Employees are protected from detriment or dismissal if it is connected with them taking or having sought to take certain types of statutory family leave. The EAT has been considering what is meant by 'sought' in this context, concluding that a purposive approach should be taken and the fact that an employee has not formally given notice to take leave does not necessarily preclude the protection. In this case the claimant was deemed to have sought to take leave - he had engaged in informal discussions with his employer about taking unpaid parental leave and had stated his intention to take leave on various occasions, and his employer had provided details of the how to apply. Whilst he had not formally provided a written request at the time of his dismissal, a stage had been reached where he had 'sought' to take leave. ([Hilton Food Solutions v Wright](#))

**Unfair dismissal:** Whether or not an employer's decision to dismiss falls within the 'band of reasonable responses' is a key factor relevant to assessing the fairness of the dismissal. A recent case highlights how the ET must objectively consider what a reasonable employer might do, and not substitute their own view. In this case the ET found that an employee who had posted a racist comment on the company's intranet had been unfairly dismissed, considering that his apologies, previous exemplary record and his request for relevant training were sufficient to conclude that dismissal was outside the band of reasonableness. On appeal, the EAT disagreed with their approach - the company had a zero-tolerance approach to racism and the ET should have concluded that dismissal was a reasonable response available to the employer even if they thought it harsh. This does not mean that employers with a zero-tolerance approach to certain misconduct will always be able to fairly dismiss, as mitigating factors should still be considered, but in this case they were outweighed by the conduct. ([Vaultex v Bialas](#))

**Whistleblowing:** The EAT has been considering the extent of knowledge that a decision maker needs to have of a protected disclosure for their decision to potentially be because of that disclosure. In this case the claimant made a protected disclosure to A, who then told B that a disclosure had been made but provided no detail on what it was about. B dismissed the claimant. The EAT, dismissing the claimant's appeal, concluded that the decision maker needed to have some knowledge of what the worker is complaining of or expressing concern about in order for whistleblowing protection to apply. It is not sufficient for the decision maker to simply know that a protected disclosure has been made. ([Nicol v World Travel and Tourism Council](#))

## Legislative developments

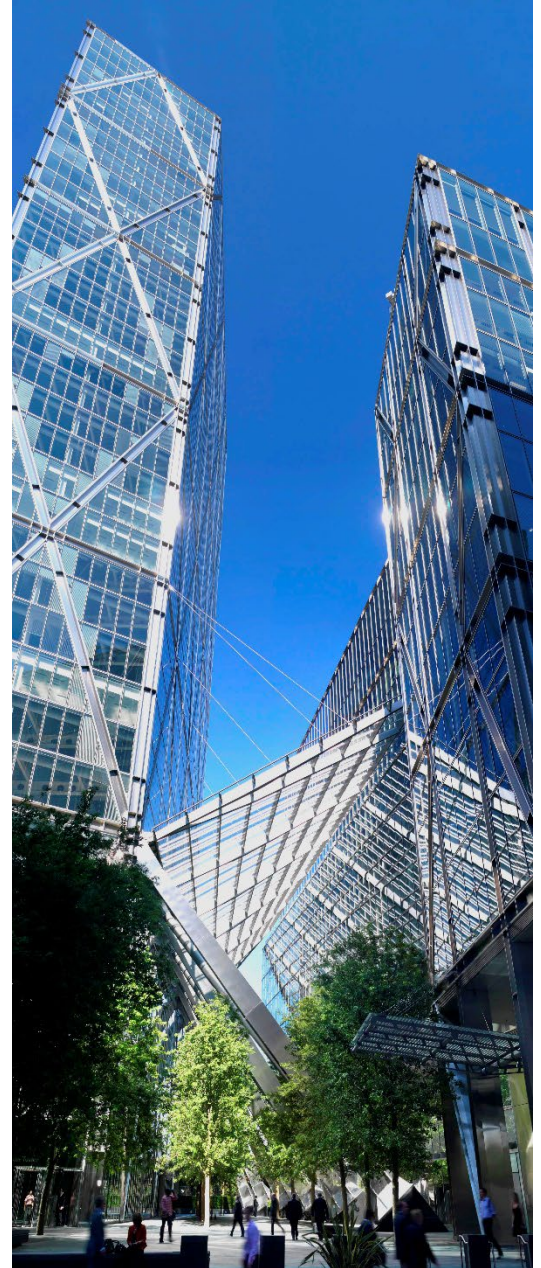
**Working time:** From **1 April 2024**, for those working irregular hours or part of a year, rolled up holiday pay will (for any leave years starting on or after this date) be lawful, and a 12.7% accrual method for calculating holiday pay will apply. [Read more on our Employment Law Watch blog.](#)

**Flexible working:** The right to request flexible working became a day one right for requests made on or after **6 April 2024**, with other procedural changes (allowing workers to make two requests in any 12-month period (up from one), requiring a response within two months (down from three), removing the need for employees to explain in their application the effect of their request, and a new requirement on employers to consult before rejecting a request) applying from the same date. [Read more on our Employment Law Watch blog.](#) There is an updated [Acas Code of Practice](#) on handling flexible working requests.

**Redundancy protection:** Extended statutory protection / priority for suitable alternative employment in a redundancy situation for pregnant employees and those on maternity, adoption or shared parental leave (SPL) in a redundancy situation applies from **6 April 2024**. [Read more on our Employment Law Watch blog.](#)

**Paternity leave:** More flexible paternity leave arrangements apply where babies had an expected week of childbirth, or were placed for adoption, on or after **6 April 2024**. Eligible employees will be able to take their two weeks of statutory paternity leave in non-consecutive weeks (instead of one block) within the first 52 weeks of birth or adoption (instead of the first 56 days). Notice requirements are also relaxed. [Read more on our Employment Law Watch blog.](#)

**Carer's leave:** From **6 April 2024**, employees have the day-one right to one week of unpaid leave in every 12 month period for providing or arranging care for a dependent with a long-term care need. Notice must be given and there are limited reasons for employers postponing the request, along with provisions to prevent dismissal or detriment for taking or seeking the leave.





#### **Rates and limits:**

- **NLW and NMW:** The usual annual increase in NLW and NMW took effect on **1 April 2024**, along with a change in the age bracket for eligibility for the NLW. The new rates are: £11.44 for over 21s; £8.60 for 18-20s; and £6.40 for 16-17s and apprentices.
- **Statutory family leave rates:** The annual increases to statutory rates for maternity, paternity, adoption, parental bereavement, shared parental leave and statutory sick pay increased to £184.03 on **7 April 2024**.
- **Compensation rates and limits:** From **6 April 2024**, the cap on a 'weeks' pay' (for e.g. statutory redundancy payments and the unfair dismissal basic award) increased to £700. This makes the maximum basic award or statutory redundancy payment £21,000. The cap on an unfair dismissal compensatory award increased to £115,115.
- **Discrimination - Vento bands:** From **6 April 2024**, the bands for injury to feelings awards in discrimination cases increased to £1,200 - £11,700 for less serious cases, £11,700 - £35,200 for cases which do not merit a higher band award, and £35,200 - £58,700 for the most serious of cases. These updated rates can be seen on our handy at-a-glance [printable guide](#).

**Immigration:** A statement of changes to immigration rules, including an increase in the general annual salary threshold for skilled workers and the shortage occupation list replaced with a new immigration salary, has been published. Most changes took effect on **4 April 2024**, although some from **11 April 2024**.

**IR35:** A new set off mechanism in force from **6 April 2024** allows a method to address the overcollection of tax following non-compliance with the off-payroll tax rules. HMRC has also issued [guidance](#).

**National Insurance Contributions (NICs):** Following an announcement in March's Spring Budget, there will be a 2% reduction in the main rate of Class 1 employee NICs effective from **6 April 2024**.

**Gender recognition:** Individuals who have changed their gender abroad can get streamlined UK gender recognition, provided the relevant country or territory has been approved and from **9 April 2024**, there is a [new list of approved countries and territories](#) for this purpose. Some previously approved countries have been removed, and new ones added.

**Paternity leave - bereavement:** A Bill, supported by the Government, to provide more protection to fathers and partners where the mother of the child dies, is making its way through the legislative process. As currently drafted, there would also be provisions where the child also dies. The draft Bill is subject to ongoing debate and amendment and may be a while off becoming law.

## Other news

**Autism:** The Department for Work and Pensions has published the [Buckland Autism Employment Review](#) which sets out several recommendations to support autistic people in the workplace. These recommendations are around the themes of raising awareness and reducing stigma; support for autistic people entering work, during recruitment, and once in the workforce; and encouraging career progression.

**Diversity, Equity & Inclusion (DEI):** The government's Inclusion at Work Panel (IAWP), tasked with developing resources to help employers to drive fairness at work, has published its [first report](#) and has made a number of recommendations for how DEI can be improved in the workplace, including endorsement for a framework for employers, development of a digital toolkit of resources, and a call for guidance from the Equality and Human Rights Commission to help clarify the legal position on DEI practices with a focus on navigating recent case law.

**Four day week:** The Four day Week campaign has launched a new initiative, 4August, encouraging employers to trial the four-day working week this August.

**Financial services:** The House of Commons Treasury Committee has published a report setting out its [findings from its Sexism in the City inquiry](#). The inquiry was launched in 2023 to explore challenges faced by women in financial services, including sexual harassment and pay disparity. The report makes several recommendations, including legislative reform, improvements to pay gap reporting and to increase protection for whistleblowers of sexual harassment. The UK government has two months to respond.

**Menopause:** The Department for Work and Pensions has published a [progress report](#), 12 months after appointing a menopause employment champion. The report notes high levels of engagement and the building of momentum on the conversation about menopause in the workplace.

## New guidance

**Flexible working:** The updated [Acas statutory code of practice](#) on flexible working applies from **6 April 2024**.

**Mental health:** The ICO has published new [guidance for employers on sharing personal data during mental health emergencies](#) at work. The guidance makes clear that data protection rules should not act as a barrier to sharing necessary and proportionate information with emergency services, medical professionals and the worker's next of kin where there is a serious risk of harm to the individual or to others.

**Neurodiversity:** CIPD has published new guidance on [neuroinclusion at work](#), providing guidance for employers on making a more neuro-inclusive workplace.

**Recruitment - artificial intelligence (AI):** The Department for Science, Innovation and Technology has published [guidance for procuring and deploying AI systems](#) for recruitment purposes, focussed particularly on sourcing, screening, interviewing and selection.



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