



UK Employment Law Update – January 2024

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](#)

Recent publications

- [Anticipating changes: UK employment law for 2024](#)
- [Changes to when convictions become spent](#)



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Case law updates

Constructive unfair dismissal: Demonstrating that an employee has affirmed or accepted a breach of contract is a way to defeat a constructive dismissal claim where the employee resigns in response to that breach. In a recent case, the Employment Appeal Tribunal (EAT) has looked at the extent to which the passage of time between the breach and resignation is relevant, concluding that a three-month gap was not affirmation on the facts. While the passage of time is a relevant factor, other issues may also be relevant to the question of whether the contract had been affirmed – in this case, it was relevant that some of the time lag was due to school holidays (the claimant was a teacher), there were ongoing negotiations between them, and the claimant had 40 years' service. Like a constructive unfair dismissal claim reported last month, consideration of the overall circumstances was necessary to determine whether an employee had, in fact, affirmed their contract. ([Leaney v. Loughborough University](#))

Whistleblowing – procedure and compensation: A claimant successfully argued that his dismissal occurred because he had made protected disclosures and he was awarded circa £1.6 million in compensation, including a 20% uplift because of a failure to follow the Acas Code on disciplinary and grievance. His employer tried to argue that the claimant was at fault for not following the grievance elements of the Acas Code but the EAT found that the disciplinary provisions were more appropriate and set out some guidance for the tribunal in determining whether the grievance or disciplinary (or both) provisions were relevant. The EAT also looked at the overall award – there is no maximum limit on the amount of compensation that can be awarded in a whistleblowing claim, and the EAT concluded that this was not overturned by contractual provisions in the employee's contract of employment that sought to place an upper limit (of £240,000) on payments if his employment was terminated. ([SPI Spirits \(UK\) Ltd v. Zabelin](#))



Legislative developments

TUPE: Following a consultation earlier this year, the government announced its intention to change the consultation obligations so that there can be direct consultation with affected staff for businesses with fewer than 50 employees, or for businesses of any size where there are fewer than 10 transferring employees (in both cases assuming there are no existing reps already in place). Regulations came into force on **1 January 2024**, with the changes for small-scale transfers applying on or after **1 July 2024**. [Read more on our Employment Law Watch Blog](#).

Holiday pay and working time: The government has announced its intention to introduce rolled up holiday pay and a 12.07% accrual method for holiday pay for those working irregular hours or part of a year. The government is also clarifying record-keeping requirements and restating the current laws that allow for carryover of holiday where this has not been taken due to family leave or sickness absence, and for payments such as commission and overtime to be 'normal remuneration' for holiday pay calculation purposes. The record keeping, carryover and normal remuneration elements came into force on **1 January 2024** (and new [guidance](#) has been issued), and rolled up holiday pay and accrual calculations changes will apply from **1 April 2024**. The Covid-related holiday carryover will stop on **31 March 2024**. [Read more on our Employment Law Watch Blog](#).

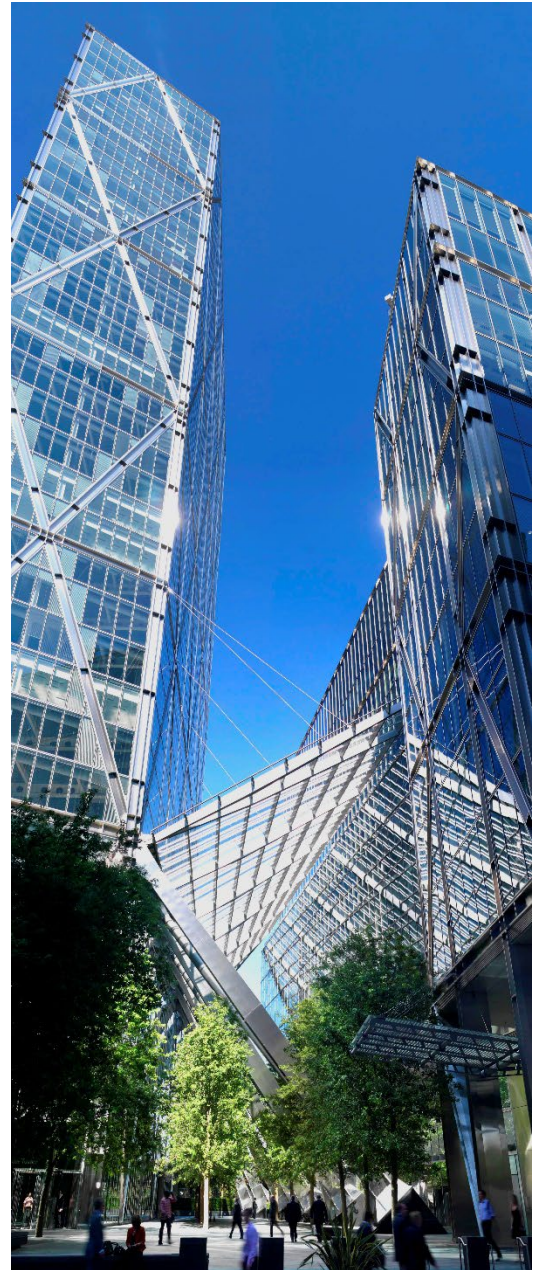
Carers' leave: Last month, we reported how the Carers Leave Act 2023 came into force but regulations would be needed on the detail of the new statutory right. Draft regulations have now been published and the changes are due to apply from **6 April 2024**. The new legislation provides employees with the right to one week of unpaid leave, (which can be taken in one go or over a number of full or half days) in every 12-month period for the purposes of providing or arranging care for a dependent with a long-term care need. This is a day one right, and employees are protected from suffering detriment or dismissal because they have taken or intend on taking the leave. Requests for leave must be provided in writing giving a minimum level of notice and there are limited provisions for employers postponing the time off. Employers should prepare now for the changes, implementing a suitable policy that reflects at least the statutory minimum position.

Equality: Regulations have been passed that ensure the law continues to provide a number of protections developed under EU-derived laws in respect of pregnancy, maternity and breastfeeding, indirect discrimination, access to employment and occupation, equal pay and on the definition of disability, and which would otherwise have been lost at the end of 2023 under the Retained EU Law (Revocation and Reform) Act 2023.

Flexible working: Further regulations have been published confirming that the right to request flexible working will become a day one right (i.e., removing the 26-week service requirement) for requests made on or after **6 April 2024**. The change had been anticipated but was not mentioned in the Employment Relations (Flexible Working) Act 2023 published during 2023. This change to flexible working is in addition to those already announced (allowing workers to make two requests in any 12-month period (up from one request), requiring a response within two months (down from three months), 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). Further regulations will be needed to confirm a commencement date for these changes; however, for alignment, it is now likely to be 6 April, a couple of months earlier than suggested previously. An updated Acas Code of Practice is expected in early 2024. Employers will need to act quickly in the first quarter of 2024 to prepare for the changes.

Industrial action: Regulations came into force on **8 December 2023** to provide minimum service levels that employers can impose on workers and trade unions during periods of strike action in passenger rail, ambulance services and, on **12 December 2023**, for border security and passport services. There is some non-statutory guidance in place, and a [statutory code of practice](#) on the 'reasonable steps' that trade unions must take to encourage compliance with requirements to work has been published.

National Insurance contributions (NICs): Class 1 employee NICs will be cut from 12% to 10% from **6 January 2024**.



Redundancy protection: Draft regulations have now been published providing details of the new statutory protections for those on maternity, adoption or shared parental leave in a redundancy situation. Currently, the law provides priority for these groups for 'suitable alternative employment' while they are on the relevant family leave. However, the new protections (assuming approved as drafted) extend the period of protection for maternity or adoption leave ending on or after **6 April 2024** and shared parental leave (SPL) starting on or after this date, as follows:

- **Pregnancy and maternity:** The protection will start from when the employee tells the employer about their pregnancy (on or after 6 April 2024). If they are not entitled to maternity leave, the protection ends two weeks after the end of the pregnancy. Otherwise, protection continues throughout the period of statutory maternity leave until 18 months after the expected week of childbirth (or date of birth if the employer is notified before the end of maternity leave).
- **Adoption:** The protection is extended to 18 months after the child is placed with the employee for adoption.
- **SPL:** Assuming the employee is not protected under the provisions above, the protection is extended to 18 months after the child was born or placed with the employee for adoption, provided they have taken six or more consecutive weeks of SPL. If they have not, the protection applies only to the periods when they are on SPL.

Previously, the length of the extensions had been unclear, so the transparency is welcomed, particularly for employers who may be planning headcount reductions during 2024 and beyond as the changes mark a significant shift in the protected periods.

Other news

Right to work: With effect from **22 January 2024**, the fines for employing someone who does not have the right to work in the UK will triple from £15,000 per illegal worker, to £45,000. A new statutory code of practice has been issued to help employers avoid the penalty.

Financial services – small dual regulated firms: The PRA and FCA have published a [joint statement](#) on their policy position over remuneration requirements for small, dual regulated firms. The amended rules and associated guidance apply to the firm's performance year starting on or after **8 December 2023**.

Fire and rehire: Following a consultation on the draft content during 2023, the final version of the Statutory Code of Practice on 'fire and rehire' is expected in **spring 2024**.

Immigration – visitor visas: The UK government has [announced](#) a series of measures affecting business-related immigration. These include changes to the visitor visas from **31 January 2024**, meaning that visitors will be permitted to undertake client-facing corporate activity, provided that activity is incidental to their employment elsewhere rather than an offshoring project. Remote working under a visitor visa will also be allowed, provided remote working is not the primary reason for their visit to the UK.

Immigration – migration: The UK government has made a number of [announcements](#) aimed at restricting work migration from **spring 2024**. These include increasing the minimum salary requirements under the skilled worker route, removing the salary discount for jobs on the shortage occupation list, and increasing the financial thresholds for family applications. Employer utilising these programmes are likely to face increased costs as a result and should revisit their policies and practices in this area to prepare for the changes.

Spring budget: This will take place on **6 March 2024**.

Workplace support: The DWP is promoting employers offering '[midlife MOTs](#)' for their over-50s workforce to help support retention of this age group.



New guidance

Holiday pay: New [guidance](#) has been issued on calculating holiday pay following the changes that took effect from **1 January 2024**.

Kinship carers: The Department for Education has published [guidance for employers](#) on supporting kinship carers in the workplace. Kinship care is where a child is raised in the care of a family member or family friend who is not their parent.

Right to work: A new [code of practice](#) has been issued on preventing illegal working and steps employers can take to avoid civil liability. It is in draft form pending approval from parliament but is expected to apply to all right to work checks from **22 January 2024** to coincide with the increase in fines for employing illegal workers (see above).

Umbrella companies: HMRC has published new [guidance](#) for employment businesses who use umbrella companies to employ workers.

Consultations

Industrial action – agency workers: The government has launched a consultation on hiring agency workers to cover industrial action. Legislation that had been in place to allow this was quashed in July 2023 following a challenge to the sufficiency of the consultation ahead of enactment. The consultation on reinstating provisions to allow agency worker cover during strike action will be open for comment until **16 January 2024**.

Predictable working patterns: Acas has launched a [consultation](#) on its draft code of practice to accompany the new legislation, (which is expected to come into force in **autumn 2024**) giving certain workers the right to request a more predictable working pattern. It is open for comment until **17 January 2024**.

Allocation of tips: A [consultation](#) has been launched on the draft statutory code of practice to sit alongside the new legislation that will require employers to pass on tips and gratuities to workers and distribute them fairly. This new legislation was enacted in July 2023, although regulations will be needed to bring it into force. The consultation on the draft code of practice is open until **22 February 2024**.

Data protection – Recruitment and keeping employment records: The ICO is seeking views until **5 March 2024** on guidance that will help employers to comply with record keeping requirements and during recruitment.

Fit notes: As part of a series of welfare reforms, the government has [announced](#) an intention to consult on reforms to the fit note regime. Currently, there is no detail on what the government has in mind nor a date for launching the inquiry.



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