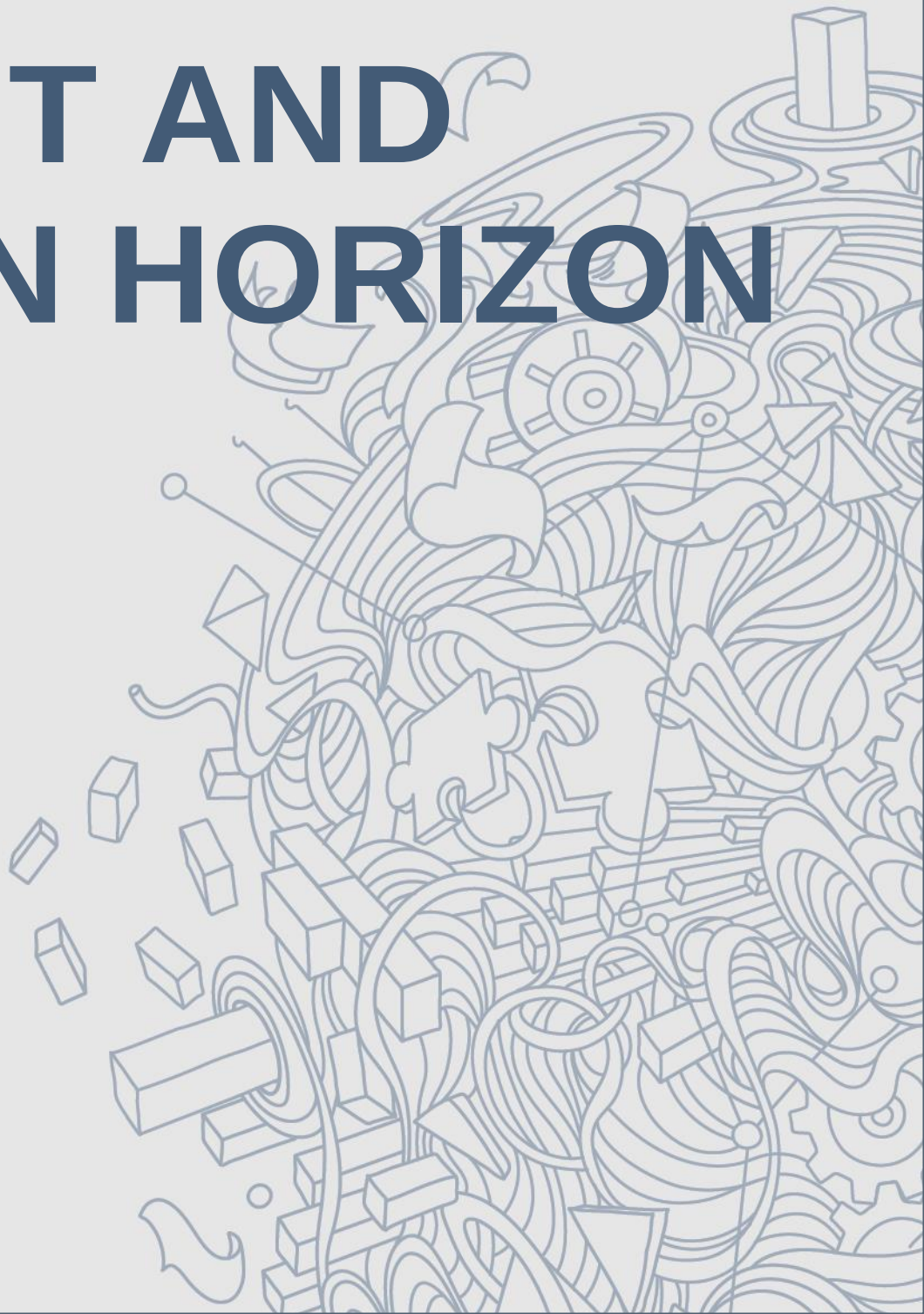
EMPLOYMENT AND IMMIGRATION HORIZON SCANNER

September 2023



ADDLESHAW GODDARD

FUTURE KEY LEGISLATION DEVELOPMENTS

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
1.	The Retained EU Law (Revocation and Reform) Act 2023	**The Retained EU Law (Revocation and Reform) Act 2023** After Brexit and to ease the transition out of the EU, the body of applicable EU law which was in force in the UK on 31 December 2020 was kept on the statute books and became known as "retained EU law". On 22 September 2022 the Government presented the Retained EU Law (Revocation and Reform) Bill 2022 to Parliament. The Government's press release explained that, "…having mapped where EU-derived legislation sits on the UK statute book, [the Government] is bringing forward this Bill in order to fully realise the opportunities of Brexit, and to support the unique culture of innovation in the UK." In its original form, the Bill provided that EU-derived secondary legislation and retained direct EU legislation would expired on 31 December 2023 unless otherwise expressly preserved by ministerial order (the sunset clause). Any retained EU law remaining in force after the sunset date was to be assimilated in the domestic statute book. The Bill in its original form also included an extension mechanism for the sunset of specified pieces of retained EU law until 2026 and provision to end the supremacy of EU law and make it easier for courts and tribunals to depart from existing EU-derived domestic case law. The Bill was far reaching and had huge implications for employment law in the UK in its original form and met with widespread concerns over its timings and an apparent lack of transparency over what legislation would be repealed automatically by December 2023. On 10 May 2023, the Government tabled amendments to the Bill including a proposed change to the sunset clause 1. Instead of automatically revoking EU derived secondary legislation and retained direct EU legislation at the end of 2023, clause 1 would revoke only the legislation set out in the Government's new revocation Schedule containing around 600 pieces of legislation. This was intended to provide certainty for business. On 29 June 2023, the Bill received Royal Assent and draft regulations were laid before Parliament on 4 September 2023. The Retained EU Law (Revocation and Reform) Act 2023 (the Act) includes: • provision to revoke EU derived secondary legislation and retained direct EU legislation listed in Schedule 1 (the revocation schedule) at the end of 2023. • a power that a relevant national authority can, before the end of October 2023, exclude specified legislation listed in Schedule 1 from revocation under clause 1. • provision to amend the European Union (Withdrawal) Act 2018 to end the principle of the supremacy of EU law, remove from UK law the effects of general principles of EU law, change the role of the UK courts in the interpretation of retained EU law and repeal s.4 of the European Union (Withdrawal) Act	31 December 2023.

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		2018 at the end of 2023 which includes directly effective rights and obligations derived from EU treaties and EU directives. • a provision for retained EU law and related law will be known as assimilated law after the end of 2023. • powers that a relevant national authority can restate, revoke or replace any secondary retained EU law by regulations or secondary assimilated law by 23 June 2026. It is not yet clear how Government will use its powers to restate, revoke or replace secondary retained EU law, but planned employment law reforms so far include modest reforms to TUPE, working time and holiday pay. One point to note is that, under the European Trade and Cooperation Agreement, if changes to UK employment law have a material effect on trade and investment or reduce employment rights, the UK may face tariffs from the EU. It remains to be seen what effect the sanction of such enforcement measures will have on the scope of reforms. In the longer term, we can expect to see groups of employees, Trade Unions and larger employers seeking to reopen case law interpreting EU derived laws. This will lead to legal uncertainty for businesses as such cases make their way through the courts. The uncertainty could last years as cases make their way through tribunals and appeal courts.	
2.	TBC	**Consultation on measures to ban or impose mandatory compensation for non-compete clauses** Driven by the need to be more competitive in the post-Covid-19 world, the Government consulted in February 2021 on measures to reform post-termination non-compete clauses in contracts of employment. Broadly, two measures to reform post-termination non-compete clauses in contracts of employment were proposed: (1) To **impose mandatory compensation for the post-employment period** that the employer wishes the employee to be restricted (similar to other jurisdictions such as France, Germany and Italy). Two complementary measures (transparency and a maximum period of non-compete), were also being considered alongside this option. (2) Alternatively, the other proposed measure was to **ban non-compete clauses** altogether (as is the case in California) The consultation closed on 26 February 2021. The Government has now published its response. It proposes to introduce legislation limiting the length of non-compete clauses in employment contracts to three months. The response sets out:	Legislation to be introduced "when Parliamentary time allows"

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		• the proposed three-month limit will apply to non-compete clauses only, it will not apply to other types of restrictive covenants such as non-solicitation or non-dealing clauses; • the proposed limit will only apply to employment contracts and limb (b) workers' contracts. It will not extend to wider workplace contracts such as partnership agreements, LLP agreements and shareholder agreements; • the Government intends that common law principles will still apply to non-compete clauses of three months or less. The starting point for restrictive covenants is that they will be unenforceable unless they are reasonable and go no further than necessary to protect legitimate business interests; • there is no mention of how the statutory limit would apply retrospectively to existing contracts. The Government has said that it will introduce legislation "when Parliamentary time allows".	
3.	TBC	**Consultation on new measures on Working Time, Holiday Pay and TUPE** On 10 May 2023, the Government published a policy paper, Smarter Regulation to Grow the Economy setting out proposed reforms to reduce working hours recording requirements under the Working Time Regulations, simplify holiday pay and leave, to exempt smaller businesses from consulting with employee representatives under TUPE and to impose a three-month time limit on non-compete clauses in employment contracts (see entry above). The Government has now published a consultation on reforms to the Working Time Regulations, holiday pay and TUPE. The proposals include: • removing any legal requirement for businesses to keep a record of the daily working hours of their workers. The Government is seeking evidence from employers on recording working hours; • creating a single annual leave entitlement of 5.6 weeks leave (rather than the current 4 weeks EU leave and 1.6 weeks domestic leave). The overall statutory entitlement would not change and employers would still be able to choose whether or not to include bank holidays in the statutory entitlement; • inviting views on clarifying the minimum rate of holiday pay and what counts as "normal remuneration".	Consultation closed on 7 July 2023.

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		• a new method for calculating holiday entitlement for workers in their first year of work together with revised guidance to provide clarity for employers; • allowing rolled up holiday pay to be paid at 12.07% of a worker's pay on each payslip for workers with regular and irregular hours; • allowing employers to consult directly with employees where there are no employee representatives in place in a TUPE transfer in situations where either there are fewer than 50 employees in the business or where the transfer affects fewer than 10 employees whatever the size of the business. The consultation closed on 7 July 2023.	
4.	Consultation on Holiday entitlement for part-year and irregular hours workers	**Holiday Entitlement: Government consultation on holiday entitlement for part-year and irregular hours workers** On 12 January 2023 the Government launched a consultation over a proposal to make holiday entitlement under the Working Time Regulations 1998 proportionate to time worked. This consultation comes in the wake of the Supreme Court's decision in *Harpur Trust v Brazel {2022]* which held that workers on permanent contracts who only work for part of the year are entitled to 5.6 weeks' paid holiday per year, just like workers who work all year. The Government proposes to introduce a 52 week holiday entitlement reference period for part-year workers and workers with irregular hours, based on the proportion of time spent working over the previous 52 week period (including weeks in which no work was done). Holiday entitlement would be calculated in hours at the start of a leave year, as 12.07% of the hours worked in the previous 52 weeks ,with an accrual system applying for the first year of employment. For workers on irregular hours, it proposes that a day's holiday should be based on a "flat average day", calculated as the average length of working day for that worker over the 52-week reference period used to calculate annual leave entitlement. The consultation closed on 9 March 2023 and there is no indication of a timescale for any proposed legislation as yet.	There is no indication of a timescale for any proposed legislation as yet.
5.	"Single source" test in equal pay claims	**Equal Pay claims: domestic legislation for single source test** Article 157 of the Treaty of the Functioning of the European Union which allows comparisons in equal pay claims to be made between workers "in the same establishment or service" where their terms and conditions are attributable to a single source, will be replicated in domestic legislation. This saves the single source test from	Secondary legislation to be laid before Parliament "before the end of the year".

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		the effect of the Retained EU Law (Revocation and Reform) Act 2023. A Government spokesperson has stated that secondary legislation will be laid before Parliament "long before the end of the year".	
6.	Various Private Members' Bills (there is no longer an Employment Bill "on the cards per se") – see *Summary and Impacts*. Instead, the Government sponsored six Private Members Bills containing proposals on the same lines as those contained within the Employment Bill	**New Employment Bill** In the Queen's Speech on 19 December 2019, the Government announced that a new Employment Bill would be brought forward, to seek to protect and enhance workers' rights post-Brexit and promote fairness in the workplace. The main elements included: 1. Creating a new, single enforcement body to offer better protection for workers; 2. Ensuring that workers receive the tips left for them in full; 3. Introducing a new right for all workers to request a more predictable contract; 4. Extending redundancy protections to prevent discrimination against women and new parents; 5. Allowing parents to take extended leave for neonatal care; 6. Introducing an entitlement to one week's leave for unpaid carers; and 7. Subject to consultation, making flexible working the default unless employers have good reason not to. However, the Employment Bill was not mentioned in the Queen's Speech on 11 May 2021 nor on 10 May 2022. It had been reported that it will be introduced "*when the time is right*". However, between June 2022 and February 2023, the Government confirmed its backing for several Private Members Bills including the provision of neonatal care leave and pay, the allocation of gratuities, service charges and tips to go to staff in full, the Protection from Redundancy (Pregnancy and Family Leave) Bill, the Carer's Leave Bill, the Employment Relations (Flexible Working) Bill and the Workers (Predictable Terms and Conditions) Bill. While Private Members' Bill usually do not become law, with Government backing four of these Bills have now been enacted and the remaining two may also find their way onto the statute book. On 20 December 2022, the Government confirmed that it is not currently progressing plans for **a single enforcement body** to enforce workers' rights including holiday pay, statutory sick pay and labour exploitation. Although there may be time to address the issue in the remaining two years of Parliament, for the time being the Government is focussing on ensuring that the existing enforcement bodies operate as efficiently as possible. The proposal for a single enforcement body had been to consolidate three existing labour market enforcement bodies (HMRC's National Minimum Wage Enforcement, Employment	Between June 2022 and February 2023, the Government confirmed its backing for six new Private Members Bills which would introduce measures previously contained in the Employment Bill as follows: • the **provision of neonatal care leave and pay**; • the **allocation of gratuities, service charges and tips to go to staff in full** (now received Royal Assent); • amending the **flexible working application** process; • **extending redundancy protections to prevent discrimination against women and new parents**; and • **introducing an entitlement to one week's leave for unpaid carers**. • **introducing the right to request a predictable work pattern for**

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		Agency Standards Inspectorate and the Gangmasters Labour Abuse Authority).	**workers and agency workers.**
7.	The Employment Relations (Flexible Working) Act 2023	**Changes to the Right to Request Flexible Working Legislation** On 5 December 2022, the Government announced its intention to introduce changes to the right to request flexible working legislation in response to the last year's consultation which closed in December 2021. The Employment Relations (Flexible Working) Act 2023 received Royal Assent on 20 July 2023. It includes the following measures: • Allowing two statutory requests in any 12-month period (rather than the current one). • Introducing a new requirement that employers cannot refuse an application unless they have first consulted the employee about the application. • Requiring employers to respond to a request within 2 months (rather than the current three). • Removing the existing requirement that the employee must explain what effect, if any, the change applied for would have on the employer and how that effect might be dealt with. The Act does not mention making flexible working requests a day one right, but the Government has confirmed that it will be introduced through secondary legislation "when Parliamentary time allows". It also does not mention any minimum standard of consultation with employees before it can refuse an application nor does it require employers to offer a right of appeal, although that is recommended in the draft Code of Practice which has been published by ACAS and on which ACAS is currently consulting (see below). The Government has also committed to non-legislative action, including: • developing guidance to raise awareness and understanding of how to make and administer temporary requests for flexible working; and • launching a call for evidence to better understand how informal flexible working operates in practice. On 12 July 2023, ACAS issued a consultation on an updated statutory Code of Practice on handling requests for flexible working. Secondary legislation is needed for the provisions to come into force which is expected in July 2024.	Secondary legislation is expected to coming into force in July 2024.

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8.	Carer's Leave Act 2023	**Carer's Leave** The Carer's Leave Act 2023, one of the Private Members' Bills which had Government backing, received Royal Assent on 24 May 2023. The Act will introduce a new statutory right of at least one week's unpaid leave for unpaid carers per year. It will be a day one right with employees able to take leave to provide or arrange for care of an immediate family member, someone in their household or who reasonably relies on them for care with a defined long-term care need. The carer will be protected from suffering any detriment arising from it and any dismissal related to exercising the right to carer's leave will be automatically unfair. Regulations will be needed which will set out the exact amount of leave which an eligible employee can take, but it looks likely to be one week. Regulations will be laid "in due course". It has been reported that this date will not be before April 2024.	Regulations will be laid down "in due course".
9.	Protection from Redundancy (Pregnancy and Family Leave) Act 2023	**Protection from Redundancy (Pregnancy and Family Leave) Act 2023** The Protection from Redundancy (Pregnancy and Family Leave) Act 2023, one of the Private Members' Bills which had Government backing, received Royal Assent on 24 May 2023. The Act provides that expectant mothers will receive greater protection from redundancy during pregnancy and new parents will have extended protections when they return from maternity, adoption and shared parental leave. The Act enables regulations to be made providing protection against redundancy "during or after" maternity leave, adoption leave or shared parental leave and to add a new provision allowing for regulations about redundancy "during or after" a "protected period of pregnancy". In a consultation response in 2019, the Government committed to extending redundancy protection to apply from the date an employee notifies the employer of her pregnancy until six months after the end of leave. Regulations will be required to implement the extended protections and the Government has said it will lay down secondary legislation "in due course".	Regulations will be laid down "in due course".
10.	Neonatal Care (Leave and Pay) Act 2023	**Neonatal Care (Leave and Pay) Act 2023** The Neonatal Care (Leave and Pay) Act 2023, one of the Private Members' Bills which had Government backing, received Royal Assent on 24 May 2023. The Act requires regulations to be made to give parents the right to take neonatal care leave and receive neonatal care pay entitlement. Regulations are expected to give parents up to 12 weeks of paid leave, in addition to other leave entitlements such as maternity and paternity leave, so that they can spend more time with their baby who is receiving neonatal care (having been born prematurely or sick) in a hospital or other agreed care setting. It will be a day one right for employees and will apply to parents	Entitlements expected to be delivered in April 2025.

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		of babies admitted to hospital up to the age of 28 days and who have a continuous stay in hospital of seven full days or more. The Government has said the new entitlements are expected to be delivered on April 2025, with approximately seven statutory instruments to be laid "in due course".	
11.	Employment (Allocation of Tips) Act 2023	**The Employment (Allocation of Tips) Act** The Employment (Allocation of Tips) Bill has received Royal Assent and is expected to come into force in May 2024. It provides a requirement that employers pass all tips to staff in full without deductions, save for those required by tax law. Employers will also be required to have a written policy on tips and to distribute them in a fair, transparent and consistent way and to keep records of how tips have been dealt with for three years from the date received.	Expected to come into force in May 2024.
12.	Workers (Predictable Terms and Conditions) Act 2023	**Workers (Predictable Terms and Conditions) Act 2023** The Workers (Predictable Terms and Conditions) Bill received Royal Assent on 18 September 2023 becoming the Workers (Predictable Terms and Conditions) Act 2023. Predictable working patterns has been recognised as an issue for some time. One of the key recommendations of the Taylor Review 2017 was the introduction of measures to address the problem of "one-sided flexibility" where a worker has no guarantee of work but is expected to be available at very short notice when required. In 2019 the Government consulted on proposals from the Low Pay Commission which included a right to request a more predictable contract. The Act will amend the Employment Rights Act 1996 to give workers and agency workers the right to request a predictable work pattern where there is a lack of predictability as regards any part of their work pattern and the change relates to their work pattern and where the purpose in applying for the change is to get a more predictable work pattern. Fixed term contracts of 12 months or less are presumed to lack predictability. The Act allows for two applications to be made in a twelve-month period. Regulations will be required to introduce a minimum service requirement (expected to be 26 weeks) to access the right. Employers will be able to reject applications on statutory grounds and workers and agency workers will have the right not to suffer a detriment short of dismissal for making an application. It would also be automatically unfair to dismiss an employee for making an application. The right to request a predictable work pattern is separate from the right to request flexible working. The draft Code of Practice on flexible working requests published by ACAS refers to predictable working requests and sets out that employees may have a separate right to request a predictable work pattern and may wish to follow the procedure for requesting a predictable work pattern set out in a new ACAS Code of Practice (yet to be published	The Bill received Royal Assent on 18 September 2023. The Act and secondary legislation are expected to come into force in September 2024. Draft ACAS Code of Practice expected to be published in the Autumn 2023.

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		but expected in draft this Autumn). It also sets out that where the purpose of a request is to improve predictability, if the request is made under the statutory right to request flexible working, it will count towards both: • the limit of two statutory requests for flexible working and • the limit of two statutory requests provided for under the right to request a predictable work pattern. It states that employees may have only one live request either for flexible working or for a predictable work pattern with the same employer at any one time.	
13.	Paternity Leave	**Paternity Leave reforms** In June 2023 the Government published its response to a 2019 consultation on proposals for reforming parental leave and pay, which was issued as part of the Good Work Plan: proposals for families. The response sets out changes to paternity leave to be implemented: • eligible fathers and partners will be able to take paid paternity leave in two separate blocks of one week each if they wish rather than having to take all their leave in one go; • eligible fathers and partners will be able to take statutory paternity leave at any time within the first 52 weeks of birth (or placement for adoption) rather than in the first 8 weeks of birth (or placement for adoption); • fathers and partners will need to give their notice of entitlement to paternity leave and pay 15 weeks before the birth, but for notice of the paternity leave start date they will only need to give 28 days' notice before the date that they intend to take each period of leave (and pay, where they qualify). Although the consultation also considered other family-related leave, including maternity leave and pay, maternity allowance, and unpaid parental leave, no legislative changes are proposed to these entitlements. Legislation to implement the changes to paternity leave will be introduced "in due course".	Secondary legislation will be introduced "in due course".
14.	Strikes (Minimum Service Levels) Act 2023	**Strikes (Minimum Service Levels) Act 2023: to provide minimum service levels for key sectors** On 10 January 2023, the Government published the **Strikes (Minimum Service Levels) Bill**. The Bill will enforce minimum service levels in a number of sectors including health, education, fire and rescue and transport services as well as border security and decommissioning nuclear installations and management of radioactive waste and spent fuel.	The consultation on the draft Code of Practice closes on 6 October 2023.

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		The Bill provides for minimum service levels to be set by the Government following consultation and the Government has already launched consultations with fire, ambulance and rail services. It hopes not to have to use the powers for other sectors, rather it expects parties in those sectors to reach a voluntary agreement on minimum service levels during strike action. When a union gives an employer notice of a strike in relation to a service where minimum service levels are set, the employer may give a "work notice" to the union. The notice will identify the people required to work during the strike to ensure that minimum levels of service are provided and specify the work they will be required to carry out during the strike. If the union fails to take reasonable steps to ensure that the people identified in the notice do not take part in the strike, the union will lose its protection from an action in tort by the employer. The Bill received Royal Assent and came into force on 20 July 2023. The specific minimum service levels for particular sectors will not come into force until secondary legislation is passed. There has been much opposition to the Bill from unions and Labour has said it will repeal the legislation if it wins the next election. On 25 August 2023, the Department for Business and Trade published a consultation on a draft Code of Practice setting out the "reasonable steps" which trade unions will be required to take to encourage compliance with work notices issued under the Strikes (Minimum Service Levels) Act 2023. The draft Code proposes five steps a trade union should take to satisfy the reasonable steps requirement including identifying the members who are subject to a work notice, encouraging those members to comply with the work notice, communicating information to the wider membership and instructing picket supervisors to take reasonable endeavours to ensure union members identified in the work notice are not encouraged by those on the picket to take strike action. In order to maintain its protection from certain liabilities in tort, the union should ensure that it does not undermine any of the reasonable steps and corrects any actions by union members and officials which may do so. The consultation on the draft Code closes on 6 October 2023. The finalised Code will require Parliamentary approval.	
15.	The Worker Protection (Amendment of Equality Act 2010) Bill	**Harassment: A new mandatory duty to prevent harassment in the workplace** On 21 July 2021, the Government published its response to the 2019 consultation on workplace sexual harassment in which it confirmed it would introduce a new duty on employers to prevent sexual harassment and third party harassment in the workplace. The Government also said it would look closely at the possibility of extending time limits for claims under the Equality Act 2010 from three to six months.	The Worker Protection (Amendment of Equality Act 2010) Bill is currently progressing through Parliament.

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		The Government is now supporting **The Worker Protection (Amendment of Equality Act 2010) Bill** (a Private Members' Bill) which is being progressed through Parliament. This Bill originally included the provision that an employer would be treated as harassing an employee (engaging in unwanted conduct related to a relevant protected characteristic) when a third party, such as a customer or client, harasses an employee in the course of their employment and the employer has failed to take all reasonable steps to prevent that harassment. The House of Lords has voted to amend the Bill to remove the clause which would have made employers liable for third party harassment and it has been confirmed that the Government will seek to accept the amendment. This will mean that the position on third party harassment will not change under the Equality Act 2010. It was also noted that a Labour government could not promise that it would not revisit the issue in the future. Employers will be under a new duty to take reasonable steps to prevent sexual harassment of their employees in the course of their employment. Breach of this duty may be enforced by the Equality and Human Rights Commission (EHRC) under its existing enforcement powers and, where a claim for sexual harassment has been upheld, by an employment tribunal. The tribunal may order an uplift of up to 25% of any compensation awarded for sexual harassment if the tribunal considers that the duty to take reasonable steps to prevent sexual harassment has been breached. The Bill is currently progressing through Parliament.	
16.	Legislation will be required	**Statutory Code of Practice on Dismissal and Re-engagement** On 29 March 2022, the Government announced that a new Statutory Code of Practice will be published on the use of dismissal and re-engagement practices, sometimes called "fire and rehire", to bring about changes to employees' terms and conditions (one of nine measures to protect seafarers' rights in the light of mass redundancies by P&O Ferries which took place without prior notice or consultation). On 24 January 2023, the Government published the draft Code of Practice on Dismissal and Re-engagement (the Code) and launched a consultation seeking views on it. The Code is intended as a practical guidance for employers that clarifies the steps employers should take when seeking to change contractual terms and conditions of employment where there is a prospect of dismissal and re-engagement. It will not apply where an employee is dismissed because there is a genuine redundancy as defined in the Employment Rights Act 1996. The purpose of the Code is to ensure that an employer takes all reasonable steps to explore alternatives to dismissal and engages in meaningful consultation with trade unions, other employee representatives or individual employees in good faith, with an open mind, and does not use threats of dismissal to put undue pressure on employees to accept new terms, instead of seeking to find an agreed solution. The Code sets out the process an employer should follow including:	The consultation closed on 18 April 2023.

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		• Communicating the wish to change terms and conditions. • Re-examining the business strategy behind the changes in light of the potentially serious consequences for employees and continuing to do so throughout the discussion and consultation process. • Sharing information on the proposals as early as possible. • Engaging in meaningful consultation conducted in good faith with the intention of seeking an agreed resolution. The timing of the consultation process will depend on the circumstances. • Putting agreed changes in writing. • Where it has not been possible to reach agreement, following the guidance set out in the Code for the unilateral imposition of new terms where, as a last resort, an employer decides to dismiss and re-engage on new terms. While the Code imposes no legal obligations on the parties, under section 203(3) of the *Trade Unions and Labour Relations (Consolidation) Act 1992* (TULRCA), tribunals and courts will be required to take the code into account when considering relevant cases. Under section 207A, they will have the power to apply an uplift of up to 25% of an employee's compensation where the code applies and the employer has unreasonably failed to follow it or a decrease of up to 25% where the employee has unreasonably failed to comply The consultation closed on 18 April 2023.	
17.	Voluntary Ethnicity Pay Reporting: Guidance for Employers	**Ethnicity pay gap reporting: voluntary reporting guidance** In the Government's response to the Commission on Race and Ethnic Disparities (see the Inclusive Britain Report published on 17 March 2022), the Government confirmed that it will not be legislating for mandatory reporting "at this stage" as it wants "to avoid imposing new reporting burdens on businesses as they recover from the pandemic". However, the Government pledged to support employers with voluntary reporting by publishing new guidance in summer 2022. On 1 February 2023 the Government confirmed the guidance would be published "in due course". On 17 April 2023, the Government published the Guidance for employers on ethnicity pay reporting. The guidance gives advice on: • Collecting ethnicity pay data for employees;	Voluntary guidance published on 17 April 2023; consultation response published on 13 July 2023.

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		• How to consider data issues such as confidentiality, aggregating ethnic groups and the location of employees. It recognises that Ethnicity Pay Gap Reporting is much more complex than Gender Pay Gap Reporting and employers may have to make decisions about how best to combine different ethnic groups to ensure results are reliable and statistically sound and to protect confidentiality. Complexities also mean employers must carefully scrutinise and explore the underlying causes for any pay disparities. • The recommended calculations and step by step instructions on how to do them. It expresses the need for sensitivity and transparency, with employers encouraged to seek expert advice. Recommended measures include: ○ percentage of each ethnic group in each hourly pay quarter; ○ mean (average) ethnicity pay gap using hourly pay; ○ median ethnicity pay gap using hourly pay; ○ percentages of employees in different ethnic groups in your organisation; ○ percentage of employees who did not disclose their ethnicity – they either answered 'prefer not to say' or gave no answer when you attempted to collect their ethnicity. • Further analysis that may be needed to understand the underlying causes of any disparities. It lists a number of questions to consider when seeking to understand the cause of the pay gap: ○ Are some ethnic groups more likely to be recruited into lower paid roles in your organisation? ○ Is there an imbalance in individuals from different ethnicities applying for and achieving promotions? ○ Do people from certain ethnic groups get 'stuck' at certain levels within your organisation? ○ Are some ethnic groups more likely to work in specific roles than other ethnic groups in your organisation, and is this reflected in pay? ○ Are some ethnic groups more likely to work in particular locations, and does this have an impact on pay? ○ Do employees from different ethnic groups leave your organisation at different rates? ○ Do particular aspects of pay (such as starting salaries and bonuses) differ by ethnicity? It also lists possible reasons why an ethnic group might be underrepresented in the organisation and how it may be helpful to compare workforce data against local ethnicity population data from the 2021 Census. • Reporting the findings. There is no requirement to do so, but employers may choose to do it to improve transparency. But employers should take care in explaining the results due to the complexity of the calculations avoiding one overarching measure, but rather present all the calculations and produce analysis for individual ethnic minority groups as well as the percentage of employees who have responded "prefer not to say".	

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		• Considering an employer action plan with the importance of taking an evidence-based approach towards actions. On 13 July 2023, the Government published its response to the 2018 consultation on mandatory ethnicity pay gap reporting and again confirmed that it would not be legislating to make ethnicity pay gap reporting mandatory "at this stage" because mandatory reporting may not always be the most appropriate mechanism for every type of employer, Instead it has produced the April 2023 guidance to support employers who wish to report voluntarily. The Labour Party has indicated in its New Deal for Working People Green Paper that it will make ethnicity pay gap reporting mandatory for businesses with more than 250 staff if it gets into power.	
18.	The UK's bonus cap rules will need to be varied or revoked	**Removal of the cap on bankers' bonuses** On 23 September 2022, the former Chancellor, Kwasi Kwarteng, announced the removal of the current cap to bankers' bonuses, which was subsequently published in The Growth Plan 2022. Currently, the bonus cap limits remuneration of certain bank staff to 100% of their fixed pay (or 200% with shareholder approval). Clause 4.9 of the Growth Plan states that, as pay in bonuses aligns the incentives of individuals with those of the bank, in turn supporting growth in the UK economy, the Prudential Regulation Authority (**PRA**) will remove the current cap. The UK's bonus cap rules (that implement the Capital Requirements Directive (**CRD)**) are in the *Remuneration* and *Remuneration Code* parts of the PRA Rulebook and the Financial Conduct Authority (**FCA**) Handbook. These rules will need to be varied or revoked to remove the 100% and 200% bonus caps. On 19 December 2022, the PRA and the FCA jointly published a consultation paper setting out their proposed rule changes to remove the existing limits on the bonus cap. They explain that the bonus cap does not limit total remuneration but limits the proportion of remuneration that can be adjusted by risk and performance measures. The proposed changes are designed to strengthen the effectiveness of the remuneration regime by increasing the proportion of compensation that can be subject to the incentive setting tools within the framework. The consultation closed on 31 March 2023.	TBC. The joint PRA and FCA consultation regarding removal of the cap closed on 31 March 2023.
19.	Regulations will be required	**Confidentiality clauses and non-disclosure agreements** In July 2019, BEIS published the Government's response to its consultation on changes to regulations on confidentiality clauses, also known as non-disclosure agreements (**NDAs**). The final proposals include legislating to limit NDAs from restricting disclosures being made to police, regulated health care professionals and legal professionals. The consultation had been launched in response to concerns that some employers had been using confidentiality clauses to "gag" victims of workplace harassment or discrimination.	TBC

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		Final proposals in the Government response include: • legislating so that limitations in NDAs are clearly set out in employment contracts and settlement agreements • creating guidance for solicitors and legal professionals responsible for drafting settlement agreements • legislating to enhance the independent legal advice received by individuals signing confidentiality clauses • enforcement measures for confidentiality clauses that do not comply with legal requirements in written statements of employment particulars and settlement agreements. Once the draft legislation has been published, employers will need to review confidentiality clauses and settlement agreements to ensure that they comply with the new rules. The Higher Education (Freedom of Speech) Act 2023 (which received Royal Assent on 11 May 2023) will prevent English higher education providers e.g. universities, from entering into NDAs with staff, students or visiting speakers in relation to sexual abuse, sexual harassment, sexual misconduct and other types of harassment or bullying. During a Westminster Hall debate on 5 September 2023, Dame Maria Miller MP called for further legislation to curb improper use of NDAs in the workplace and claimed the Solicitors Regulatory Authority's NDA guidance does not go far enough. Legislation which was originally proposed by the government has not yet been brought forward.	
20.	Bill of Rights 2022-2023	**New UK Bill of Rights (to replace the Human Rights Act 1998)** In December 2021, the Government published a consultation, *Human Rights Act Reform: A Modern Bill of Rights* to consult on reforming the existing Human Rights Act 1998 and replacing it with a Bill of Rights. The consultation closed on 8 March 202 and the Government responded on 12 July 2022 by introducing the Bill of Rights Bill into the House of Commons on 22 June 2022, with the aim of repealing the Human Rights Act 1998 and creating a new domestic human rights framework around the ECHR, to which the UK will remain a signatory. On 7 September 2022, it was reported that the Bill of Rights Bill 2022-23 had been dropped by the new Government headed by Liz Truss and would not progress to its second reading, which had been scheduled to take place on 12 September 2022. However, on 7 November 2022, it was reported that the Bill of Rights Bill 2022-23 will resume its passage through Parliament "within weeks". It was understood	The Bill was withdrawn on 27 June 2023.

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
		to have been reinstated under the Government headed by the new Prime Minister, Rishi Sunak. On 8 May 2023 it was again reported that the Bill would be dropped. On 27 June 2023, it was confirmed that the Bill of Rights Bill would make no further progress.	
21.	Future of Work Review	**Future of Work Review: to focus on key issues and challenges for the labour market for the future** On 12 May 2022 the Government announced that Matt Warman MP will lead the Future of Work review to be conducted over the spring and summer of 2022. The purpose of the review is to build on existing Government commitments (including as set out in the Taylor Review) and to create a detailed assessment on key issues facing the labour market. It will then provide a set of recommendations for Government to consider. The Future of Work Review will be in 2 parts: 1. The first phase - a high level assessment of key strategic issues on the future of work - is now complete (see Matt Warman MP's Response here). The Government will now look into 4 key areas: a) AI and automation: Considering what more can be done to (i) promote the UK to continue to be a world leader in AI and (ii) map and support areas more susceptible to the pace of change. b) Skills: Supporting initiatives to enable a more agile approach to the approval and delivery of training. c) Place and flexibility: Considering the rights of those who wish to work flexibly and develop a better understanding of what it means for different groups within the workforce. d) Workers' Rights: Encouraging transparency on what business now expect from their workers and when, and working to establish best practice and set clear expectations. 2. There is no indication yet of when phase 2, a more detailed assessment of selected areas of focus from the first phase, will be delivered.	Phase 1 completed on 31 August 2022. No timetable yet for Phase 2
22.	The Judicial Review and Courts Act 2022.	**Employment tribunals and EAT: consultation on panel composition and new procedure rules** The Judicial Review and Courts Act 2022 (JRCA) received Royal Assent on 28 April 2022 and the Judicial Review and Courts Act 2022 (Commencement No3) Regulations 2023 came into force on 28 June 2023. The Regulations provide for a new Online Procedure Rule Committee and for the creation of Online Procedure Rules and their scope.	The transfer of responsibility for rules of procedure in the employment tribunals and the EAT from DBT to the TPCs was anticipated to commence in early 2023.

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
		One of the provisions of the JRCA is that it transfers responsibility for the rules of procedure in the employment tribunals and the EAT from DBT to the Tribunal Procedure Committee (**TPC**) which was anticipated to commence in early 2023. The Senior President of Tribunals (SPT) launched a consultation on panel composition in the employment tribunals and EAT. In the employment tribunal it is suggested that the SPT should decide on whether the panel consists of one, two or three panel members. It suggests that cases will usually be heard by an employment judge sitting alone and there should be a reduction in cases in which non-legal panel members are used. However, a panel of two employment judges could be appropriate in complex cases or to help with judges' development. In addition, the consultation proposes to remove the current discretion to allow a panel in a preliminary hearing, meaning that all preliminary hearings will be conducted by an employment judge sitting alone. It proposes that the current system in the EAT should continue. The consultation closed on 27 March 2023.	Consultation on panel composition in the ETs and EAT closed on 27 March 2023.
23.	The Police, Crime, Sentencing and Courts Act 2022	**Rehabilitation of offenders** Under section 193 of the Police, Crime, Sentencing and Courts Act 2022 (**PCSCA**) the time it takes for certain convictions to become 'spent' so that they are no longer automatically disclosed on employment checks will be reduced so that: 1. custodial sentences of up to one year become 'spent' after 12 months without re-offending; 2. convictions between one to four years become 'spent' after four crime-free years; and 3. sentences of over four years do not need to be automatically disclosed to employers where there has been a seven-year period of rehabilitation. The changes do not apply to convictions relating to serious sexual, violent or terrorist offences for which the sentence was four years or more. The PCSCA received Royal Assent on 28 April 2022 and the relevant provision is to be brought in by regulations in due course.	Regulations will be required.
24.	TBC	**Menopause discrimination in the workplace** In July 2021 the House of Commons Women and Equalities Committee (**WEC**) launched an inquiry seeking views on the extent of discrimination faced by menopausal people in the workplace and how Government policy and workplace practices can better support those experiencing the menopause.	

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		On 28 July 2022, the WEC published a report, advocating that employers' lack of support for menopausal symptoms is pushing "highly skilled and experienced" women out of work, with impacts on the gender pay gap, the pension gap and female representation in senior leadership positions. The report asks the Government to: • amend the Equality Act 2010 (**EqA 2010**) to introduce menopause as a protected characteristic, and • include a duty for employers to provide reasonable adjustments for menopausal employees. However, these calls for legislative reform are unlikely to be taken forward after the Government confirmed in a letter to Caroline Nokes MP in May 2022 that it does not intend to amend the EqA 2010 to add the menopause as a protected characteristic and that it has no plans to implement the combined discrimination provision in section 14 of the EqA 2010, as this would introduce further complexity and costs for employers. Additionally: • On 3 February 2022, the Government launched a UK Menopause Taskforce to look at tackling issues surrounding the menopause. The taskforce will meet every 2 months for an initial period of 18 months, with future meetings scheduled by theme, including healthcare provisions, education and awareness, menopause in the workplace and research evidence and data; and • On 18 July 2022, the Government responded to recommendations from a commissioned independent report through the 50PLUS Roundtable on Menopause and the Workplace published in November 2021, confirming an intention to introduce change in relation to menopause support in key areas of Government policy, employer practice, and wider societal and financial change. • On 12 October 2022, the All-Party Parliamentary Group on Menopause published a report on the impacts of menopause and the case for policy reform. The report recommends that the government must: (1) Co-ordinate and support an employer-led campaign to raise awareness of menopause in the workplace and to help tackle the taboo surrounding menopause and work; and (2) Update and promote guidance for employers on "best practice" menopause at work policies and supporting interventions. This should be tailored to organisations of different sizes and resources to ensure it is as effective as possible and include the economic justification and productivity benefits of such interventions. • On 24 January 2023 the Government published its response to the WEC's *Menopause and the workplace* report rejecting many of the recommendations including the commencement of the combined discrimination provision on s14 Equality Act 2010 and the recommendation for a consultation on making menopause a protected characteristic. • On 28 February 2023, the Labour Party announced that if in government It will introduce a requirement for employers with over 250 employees to publish and implement a menopause plan setting out how	

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
		they are supporting employees experiencing menopause symptoms together with government guidance for employers on how best to support their employees.	
25.	National Disability Strategy	**National Disability Strategy: removing barriers faced by disabled people in all aspects of their lives including work and business** On 28 July 2021 the Government published a National Disability Strategy setting out various steps that it will take to remove barriers faced by disabled people in all aspects of their lives including work, justice, politics, transport, housing and leisure services. It also committed to consult on voluntary and mandatory reporting of disability in the workforce by large employers. The consultation ran until 25 March 2022 seeking views on how employers with more than 250 employees might be encouraged to collect and report statistics about disability to make their workforces more inclusive and exploring how Government and employers can make workplaces more inclusive for disabled people and increase transparency. The consultation closed on 25 March 2022. The Government's response was expected in the summer of 2022, but is reported as "not imminent". In January 2022, the High Court ruled that the strategy is unlawful, based on a case brought by four disabled people regarding the consultation process (see *Future Key Cases* below). On 11 July 2023, the Court of Appeal overturned the High Court declaration and agreed that the UK Disability Survey was an insight and information gathering exercise that did not amount to voluntary consultation. The Government is expected to provide further details of what the Court of Appeal judgment means for the implementation of the National Disability Survey in September 2023.	The consultation closed on 25 March 2022. The Government is expected to provide further details for the implementation of the National Disability Survey in September 2023.

FUTURE KEY CASES

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
1.	Climer-Jones v Cardiff and the Vale University Local Health Board	**Whistleblowing protection: Compensation and remedies** An employment tribunal found that the claimant had been subject to unlawful detriments on the grounds of having made protected disclosures and was unfairly dismissed, contrary to s47B and s103A of the Employment Rights Act 1996. The tribunal commented that this was one of the most	Heard by the EAT on 29 April 2022. Awaiting judgment.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		serious and sustained cases of systemic bullying it had seen and found that, in addition to suffering several detriments, Ms Climer-Jones had experienced the highest degree of hurt feelings, distress and impact on her family life. The case was heard by the EAT on 29 April 2022. Awaiting judgment.	
2.	Chief Constable of the Police Service of Northern Ireland and another v Agnew and others	**Holiday Pay: Whether a series of deductions is broken by three-month gap** Contrary to the EAT's decision in *Bear Scotland v Fulton*, the Northern Ireland Court of Appeal held in 2019 that a "series" of unlawful deductions from holiday pay would not necessarily be interrupted by gaps of more than three months. Heard by the Supreme Court on 14 and 15 December 2022.	Heard by the Supreme Court on 14 and 15 December 2022. Awaiting judgment.
3.	McClung v Doosan Babcock Ltd and others	**Philosophical Belief: Is supporting Rangers Football Club a protected philosophical belief?** An employment tribunal held that supporting a football club does not amount to a protected philosophical belief under the Equality Act 2010 (EqA). The Claimant, a supporter of Rangers FC for 42 years, believed that it was a way of life and as important to him as attending church for religious people. Albeit that the belief was genuinely held, the remaining *Grainger* criteria were not met – explanatory notes to the EqA provides that adherence to a football team is not a belief capable of protection; support of a football club is akin to a lifestyle choice not a belief as to a weighty or substantial aspect of human life; lacked cogency, cohesion and importance; did not invoke the same respect in a democratic society as say ethical veganism. The appeal to the EAT was heard on 2 March 2023.	Heard by the EAT on 2 March 2023. Awaiting judgment.
4.	R (on the application of Palmer) v Northern Derbyshire Magistrates' Court	**Collective redundancies: Can administrators be prosecuted personally for failing to notify Secretary of State of collective redundancies?** Mr Palmer brought a judicial review of the decision to prosecute him as an administrator under TULR(C)A 1992, s 194, arguing that administrators should not fall within the definition of section 194(3) of those potentially criminally liable — 'any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity' — as administrators' authority derives from the Insolvency Act, not the company, making their position distinguishable. In November 2021 the High Court held that administrators may be liable personally for the offence in exactly the same way as company directors. The case was heard in the Supreme Court on 8 March 2023.	The case was heard in the Supreme Court on 8 March 2023.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
5.	Independent Workers Union of Great Britain v Central Arbitration Committee and another	**Employment status and trade union freedom right under Article 11 ECHR** The Court of Appeal held that Deliveroo riders do not fall within the scope of the trade union freedom right under Article 11 of the European Convention on Human Rights (**ECHR**) because there is no employment relationship between them and Deliveroo. Article 11 of the ECHR concerns the freedom of assembly and association including the right to form and to join trade unions for the protection of one's interests. A trade union may apply to the Central Arbitration Committee (**CAC**) for statutory recognition in respect of a group of workers for union entitlement to conduct collective bargaining with the employer on pay, hours and holidays on behalf of the workers. The Court of Appeal held that the CAC was entitled to conclude that the Deliveroo riders were not in an employment relationship with Deliveroo for the purpose of Article 11, given the CAC's finding that riders were under no obligation to provide services personally and had a virtually unlimited right of substitution. Permission to appeal to the Supreme Court was granted on 15 July 2022 and the case was heard by the Supreme Court on 25 and 26 April 2023.	Case was heard in the Supreme Court on 25 and 26 April 2023.
6.	HSBC EWC & HSBC Continental Europe (1)	**European Works Councils: compliance** The Central Arbitration Committee (CAC) found that the EWCs complaints that the terms of the HSBC EWC Agreement had not been complied with were not well founded. The EWC claimed that excluding the UK business from the scope of the Agreement and excluding UK representatives from the EWC was a breach of its articles. The CAC did not determine whether it had jurisdiction to hear the EWC's complaints, instead it concluded the complaints were not well founded. A Rule 3(10) hearing was scheduled to be heard by the EAT on 9 May 2023.	A Rule 3(10) hearing was scheduled to be heard by the EAT on 9 May 2023.
7.	DWP v Boyers	**Discrimination arising from disability** The EAT found that the Tribunal had not erred in finding that a disabled employee's dismissal following a period of absence amounted to discrimination arising from disability under s15 Equality Act 2010. It held that the dismissal could not be justified as a proportionate means of achieving a legitimate aim when the employer had failed properly to evaluate a trial the employee had completed in a different role in a different location which might have avoided her dismissal. A rule 3(10) hearing was heard by the EAT on 9 May 2023.	A rule 3(10) hearing was heard by the EAT on 9 May 2023.
8.	HMRC v Professional Game Match Officials Ltd	**Employment status: Are match referees employees?**	Heard in the Supreme Court on 26 June 2023.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		The First Tier Tribunal (**FTT**) allowed the taxpayer's appeal and found that referees were not employees. HMRC appealed to the Upper Tribunal. The Upper Tribunal dismissed HMRC's appeal and found that there was insufficient mutuality of obligation in the arrangements, and therefore no error of law in the FTT's conclusion. HMRC appealed to the Court of Appeal (**CA**). The CA agreed with the Upper Tribunal's decision that there was no overarching contract of employment with the referees but considered that on each assignment (i.e. a match day) there could be a contract of employment. The CA found the ability of either side to cancel an engagement before the match did not negate the necessary mutuality of obligation, holding that the fact that a contract permits either side to terminate the contract before it is performed is immaterial. HMRC appealed to the Supreme Court and the case was heard on 26 June 2023.	
9.	Element v Tesco Stores Ltd	**Equal Pay: Burden of Proof** The EAT held that the statutory burden of proof under s136 of the Equality Act 2010 (EqA) does not shift when determining preliminary issues in an equal pay claim. The burden of proof only shifts when a prima facie case on all aspects of the claim has been established. Here there was a preliminary hearing to determine the single issue of whether there was a job evaluation study (JES) that rated the claimants' and comparators' jobs as equivalent. The tribunal did not err in making finding of facts and drawing inferences to reach a conclusion on the balance of probabilities. The EAT also confirmed that whether a study is a JES for the purposes of the EqA should be determined by applying the statutory definition. The case is due to float at the Court of Appeal on 17 and 18 October 2023.	Due to float at the Court of Appeal on 17 and 18 October 2023.
10.	Kocur v Angard Staffing Solutions Ltd and anor	**Agency Workers: Can agency workers been employed on the same terms as directly recruited employees?** The Court of Appeal upheld the EAT's decision that Regulation 13(1) of the Agency Workers Regulations 2010 (SI 2010/93), read in conjunction with Article 6 of the Temporary Agency Workers Directive (EC) 2004/104, only entitled the appellant agency worker to be notified of appropriate jobs on the same basis as directly recruited employees. It dismissed the claim that these Regulations entitle agency workers to apply for and/or be considered for such notified jobs on the same terms as directly recruited employees.	Due to be heard in the Supreme Court on 7 December 2023.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
11.	Ryanair DAC v Morais	**Trade Unions: are striking employees protected from detriment under TULRCA and the Blacklisting Regulations?** The EAT held that section 146 of TULRCA, which protects workers from detriment connected with trade union activities, confers protection on workers who take union industrial action, regardless of whether such action is protected industrial action. The EAT also held that striking workers are protected from detriment under the Employment Relations Act 1999 (Blacklists) Regulations 2010. In reaching its decision, the EAT built on and applied the reasoning in *Mercer v Alternative Futures Ltd* (see above) which is also subject to appeal. The case was stood out by the Court of Appeal on 11 April 2022 and will be stayed until the Supreme Court has given a decision on the permission to appeal sought in the case of *Mercer v Alternative Future Group Ltd.*	Stood out by the Court of Appeal on 11 April 2022. Stayed until the Supreme Court has given a decision on the permission to appeal sought in the case of *Mercer v Alternative Future Group Ltd.*
12.	Mercer v Alternative Future Group Ltd	**Trade Unions: whether protection from detriment for participating in industrial action should be read into TULRCA.** The EAT held that a lack of protection from detriment for having participated in strike action under s.146 of the Trade Union and Labour Relations (Consolidation) Act 1992 (**TULRCA)** was a breach of Article 11 of the European Convention on Human Rights and that such protection should therefore be read into s.146 TULRCA. The Court of Appeal held that failure to give employees legislative protection against any sanction short of dismissal for taking official industrial action might put the UK in breach of Article 11 of the European Convention on Human Rights, even in the case of a private sector employer, if the sanction was one which struck at the core of trade union activity. However, an attempt to address this by reading down section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 would result in impermissible judicial legislation and was therefore a matter that should be left to Parliament. The case is due to be heard by the Supreme Court on 12 and 13 December 2023.	Supreme Court granted permission to appeal in November 2022. The case is due to be heard on 12 and 13 December 2023.
13.	Accattatis v Fortuna Group (London) Ltd	**Covid-19: Did Covid-19 concerns justify a refusal to attend work?** The tribunal held that Covid-19 concerns alone may not justify a refusal to attend work under s.100(1)(e) of the Employment Rights Act 1996 if the employers have reasonably tried to accommodate the employees' concerns and reduce transmission risk. The case is due to be heard by the EAT on 20 December 2023.	Due to be heard by the EAT on 20 December 2023.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
14.	Tyne and Wear Passenger Transport Executive t/a Nexus v National Union of Rail, Maritime and Transport Workers and another	**Trade Unions: Equitable remedy of rectification** The Court of Appeal held that the equitable remedy of rectification is not available to an employer for a legally unenforceable collective agreement. As the legal consequences of the relevant collective agreement were embodied in the individual employment contracts that incorporated it, the employers should have sought to rectify the employment contracts and brought the claim against the employees concerned not the trade unions, who were the wrong defendants. Permission to appeal to the Supreme Court was granted on 6 April 2023.	Permission to appeal to the Supreme Court was granted on 6 April 2023.
15.	Randall v Trent College Ltd and others	**Discrimination: Belief discrimination following controversial sermon** A Tribunal rejected a school chaplain's claim for religion or belief discrimination follow a sermon he delivered in the school chapel. In the sermon the chaplain said that pupils did not have to accept the ideas and ideologies of LGBT activists where they conflict with Christian values and they should make up their own minds. The Tribunal held that the school had been justified in objecting to the way the chaplain manifested his beliefs as it was contrary to his safeguarding duties and the school's statutory duties to the pupils. Permission to appeal to the EAT has been granted, awaiting listing for a preliminary hearing.	Permission to appeal to the EAT has been granted, awaiting listing for a preliminary hearing.
16.	Manjang v Uber Eats UK Ltd & Ors, Raja v Uber	**Discrimination: Uber workers to challenge facial recognition software as discriminatory.** Two separate claims to employment tribunals will allege that Uber's decision to use a facial recognition system to verify the identity of their drivers indirectly discriminates on the ground of race. Each claimant is being supported by the Independent Workers Union of Great Britain and App Drivers or Couriers Union. The cases are due to be heard by an employment tribunal with hearing dates awaited.	Awaiting hearing date to be listed in the Employment Tribunal.
17.	USDAW v Tesco Stores Ltd	**Employment Contracts: Implying contractual terms.** The Court of Appeal allowed Tesco's appeal from an EAT decision that there existed a mutual intention between the parties in the terms of the contract that the right to retained pay would be permanent for as long as each relevant employee was employed in the same substantive role. The EAT decision had prevented Tesco from terminating and re-engaging a group of warehouse operatives in order to remove the contractual entitlement to the enhanced pay. The Court of Appeal held that the EAT should have interpreted the express terms of the contract in accordance with their natural and ordinary meaning, namely that Tesco would have the right to give notice in the ordinary way, and that the entitlement to retained pay would only last as long as	Due to be heard by the Supreme Court on 24 and 25 January 2024.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		the specific contract. In addition, the Court of Appeal overturned the associated injunction issued as part of the decision. Due to be heard by the Supreme Court on 24 and 25 January 2024.	
18.	Hope v British Medical Association	**Unfair dismissal: was dismissal for bringing numerous grievances which the claimant refused to progress or withdraw fair?** The EAT held that the claimant had been fairly dismissed for bringing numerous vexatious and frivolous grievances and refusing to comply with a reasonable management instruction to attend grievance meetings. The appeal was on the basis that the tribunal had wrongly concluded that the claimant's actions could have been construed as gross misconduct in the contractual sense. The EAT held that not every case will have such a contractual element and where there is no contractual element the tribunal is not required to determine whether the conduct amounted to a contractual breach. It held that the claimant has been unfairly dismissed as the conduct did amount to gross misconduct as given the size of the employer and its administrative resources, the respondent had acted reasonably.	Court of Appeal hearing for 2 February 2023 vacated. A new hearing date is awaited.
19.	Bailey v (1) Stonewall Equality Ltd (2) Garden Court Service Company (3) representatives of Garden Court Chambers	**Religion and belief: did a barristers' chambers discriminate against a barrister due to her 'gender critical' philosophical beliefs and did the organisation Stonewall instruct, cause or induce that discrimination?** An employment tribunal held that Garden Court Chambers had discriminated against a barrister for holding 'gender critical' beliefs and for expressing misgivings about Stonewall's policy aims, but rejected the claimant's claim against Stonewall for instructing, causing or inducing that discrimination. The employment tribunal found that the communications from Stonewall relating to the claimant were just a protest and not sufficient to amount to an inducement, or attempted inducement, of any particular course of action by Garden Court. The claimant has appealed to the EAT as to whether the ET was correct to reject claims that Stonewall had instructed, caused or induced discrimination by Garden Court (or attempted to do so), under section 111 of EqA 2010. A £20,000 costs award was made against representatives of Garden Court Chambers for unreasonable conduct of their solicitor in preparing the trial bundle in the case.	Permission to appeal to the EAT has been granted. Awaiting hearing date to be listed.
20.	Lloyd v Elmhurst School Limited	**NMW: calculation of minimum wage according to "basic hours"** The EAT held that a teaching assistant who was employed to work three days a week during term time but was contractually entitled to the usual school holidays as “holidays with pay”, was entitled to receive minimum wage payments calculated according to her “basic hours”, which could include hours that were not working hours. The tribunal had erred in focusing on weeks the	Permission to appeal to the Court of Appeal has been sought.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		claimant had worked, rather than ascertaining her basic hours from her contract alone. Permission to appeal to the Court of Appeal has been sought.	
21.	Higgs v Farmor's School	**Religion/Belief discrimination: proportionality assessment** The EAT has upheld an appeal finding that the tribunal failed to engage with the "reason why" question to determine whether the school's treatment of a teaching assistant who posted on Facebook using inflammatory language which could have led readers to believe that she held homophobic and transphobic beliefs and who was dismissed for gross misconduct. In determining whether the school's treatment was because of, or related to, the manifestation of her beliefs or because she had manifested her beliefs in a justifiably objectionable way, the tribunal needed to carry out a proportionality assessment and be satisfied that the measures adopted by the employer were prescribed by law and recognised the essential nature of the employee's rights to freedom of belief and freedom of expression. The case was remitted to an employment tribunal for re-hearing on the issue.	The case has been remitted to the Employment Tribunal for a re-hearing of the issue.
22.	Moustache v Chelsea and Westminster NHS Foundation Trust	**Tribunal Practice and Procedure: Failure to clarify claims** The EAT has held that a tribunal should have clarified the claims brought by a litigant in person at the outset of a full merits hearing and a failure to do so was an error of law. Although a list of issues had been prepared by the respondent and purportedly agreed by the claimant, it did not include a claim for discriminatory dismissal due to mental ill health (s.15 EqA). As it was not recorded in the list of issues, the tribunal failed to adjudicate on this claim. The EAT held that the claim form and witness statement contained sufficient information to alert the tribunal that the claimant, a litigant in person, was bringing a claim under s.15 about her dismissal. The unfair dismissal and discrimination claims were remitted to an employment tribunal. Permission to appeal to the Court of Appeal has been sought.	Permission to appeal to the Court of Appeal has been sought.

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