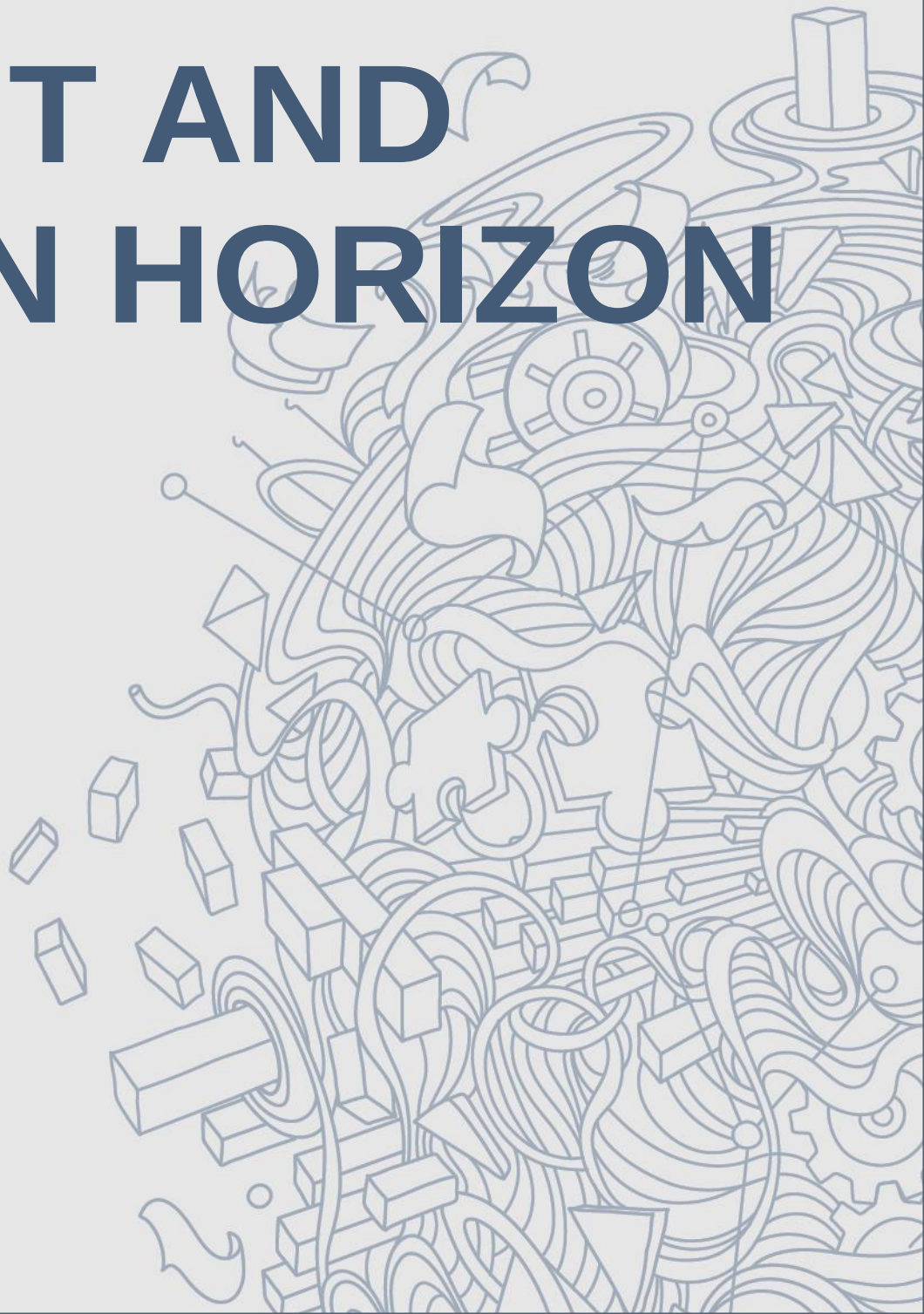
EMPLOYMENT AND IMMIGRATION HORIZON SCANNER

November 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** On 29 June 2023, the Retained EU Law (Revocation and Reform) 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 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. The Government has laid before Parliament regulations to reproduce into domestic law certain interpretive effects of retained EU law in relation to certain equality rights that would otherwise cease to have effect from the end of 2023 under the Retained EU Law (Revocation and Reform) Act 2023 (see below – The Equality Act 2010 (Amendment) Regulations 2023). It has also laid before Parliament draft regulations the make changes to record keeping, holiday pay and entitlement under the Working Time Regulations 1998 and minor changes to TUPE (see below). 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 any future reforms. In the longer term and with the end of supremacy of EU law and the removal of the effects of general principles of EU law from UK law , 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	31 December 2023.

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		make their way through the courts. The uncertainty could last years as cases make their way through tribunals and appeal courts.	
2.	The Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023	**Response to consultations on holiday entitlement for part-year and irregular hours workers and on new measures on Working Time, Holiday Pay and TUPE** 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 came 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. This consultation closed on 9 March 2023. Separately, 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 consultation on reforms to the Working Time Regulations, holiday pay and TUPE closed on 7 July 2023. The Government has now published its response to both consultations which sets out the changes to be implemented: • **Time record keeping:** ▪ **Simplifying record-keeping requirements** under WTR to provide that employers do not have to keep a record of the daily working hours of all workers if they are able to demonstrate compliance without doing so. • **Single annual leave entitlement:** ▪ **No longer taking forward a single annual leave entitlement**. Instead, the Government wants to maintain two distinct pots of annual leave and two existing rates of holiday pay, so that workers continue to receive 4 weeks at normal rate of pay and 1.6 weeks at basic rate of pay.	Regulations are intended to come into force on 1 January 2024.

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		▪ Legislating to **define normal remuneration** in order to retain the two rates of pay, so that a week's pay for the purposes of holiday pay for the 4 weeks at the normal rate of pay will include (among other things) commission and regular overtime. • **Irregular-hours/part-year workers:** ▪ **Permitting rolled-up holiday pay for irregular-hours and part-year workers only**. The Government will legislate to ensure that all employers that choose to use rolled-up holiday pay calculate it based on a worker's total earnings in a pay period. ▪ **Providing a method for calculating holiday accrual for irregular-hours and part-year workers** (which may include some agency workers) based on 12.07% of hours worked in a pay period both in the first year of employment and beyond. Other workers will continue to accrue leave at 1/12th of their entitlement on the first day of each month during their first year of employment. ▪ Legislating to **define irregular-hours and part-year workers** and to introduce a **52-week reference period** for accrued annual leave **when irregular-hours and part-year workers go on maternity/family related leave or sick leave** allowing employers to look back and work out an average of hours worked across that period. • **Preserving rights derived from EU case law:** ▪ Preserving workers' existing rights derived from EU case law to **carry over untaken holiday** into the following leave year in certain situations, including (among other things) inability to take holiday due to sickness, maternity/family related leave or where misclassified or dissuaded from taking it. • **Repealing COVID-19 holiday rules:** ▪ **Repealing the COVID-19 holiday carry-over rules**, with a short transitional period to enable any accrued leave to be used up.	

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		• **TUPE Reforms:** ▪ Amending TUPE to allow small businesses (with fewer than 50 employees) proposing a transfer of any size *and* businesses of any size proposing to transfer fewer than 10 employees to consult directly with their employees if there are no existing worker representatives in place. Regulations are intended to come into force on 1 January 2024.	
3.	The Equality Act 2010 (Amendment) Regulations 2023	**Draft regulations to retain key equality rights derived from EU law** The draft **Equality Act 2010 (Amendment) Regulations 2023** will reproduce in the Equality Act certain key equality rights derived from EU law which would otherwise be sunsetted from the end of 2023 under the Retained EU (Revocation and Reform) Act 2023. The intention is to ensure protection against discrimination is preserved in domestic law from 1 January 2024. The amendments relate to: • Direct discrimination relating to **pregnancy, maternity and breastfeeding**. • **Indirect associative discrimination** where a person without a relevant protected characteristic suffers substantively the same disadvantage as those with that protected characteristic. • **Discriminatory statements about recruitment** which may constitute direct discrimination in the context of access to employment and occupation as regards public statements outside a recruitment process. • **Preserving the single source test** for comparators in equal pay claims giving the right to equal pay where employees' terms are attributable to a single source (Article 157 of the Treaty on the Functioning of the European Union). • **The definition of disability** in relation to employment and occupation to include a person's ability to participate fully and effectively in working life on an equal basis with other workers. The draft Regulations are due to come into force on 1 January 2024.	Regulations are intended to come into force on 1 January 2024.

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4.	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: • 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".	Legislation to be introduced "when Parliamentary time allows"
5.	Strikes (Minimum Service Levels) Act 2023	**Strikes (Minimum Service Levels) Act 2023: to provide minimum service levels for key sectors**	Draft regulations for border security, passenger rail services, NHS ambulance services and the NHS

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		The new **Strikes (Minimum Service Levels) Act 2023** enables minimum service levels to be implemented through regulations in six key sectors: 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. Where a minimum service level is in place and a trade union gives an employer notice of strike action, the employer can issue a work notice identifying the persons required to work and the work they must carry out to meet the minimum service level for the strike period. Once a work notice has been given to the trade union, the union must take "reasonable steps" to ensure all its members identified in the work notice comply with it. A union could face damages claims or an injunction to prevent the strike taking place if it fails to take reasonable steps. Individuals identified in a work notice who fail to comply and take part in strike action, could face disciplinary action including dismissal. The Act provides for minimum service levels to be set by the Government following consultation and the Government has already laid draft regulations to set minimum service levels during strike action affecting border security, passenger rail and ambulance 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. Minimum Service Levels for border security will require services to be provided at a level that means they are no less effective than if a strike were not taking place without relying on cover from other parts of the Civil Service or the armed forces and all ports and airports must remain open during a strike. Passenger rail services are expected to be 40% of timetabled services and ambulance services (in England only) will be required to answer and triage all emergency calls with all life-threatening calls, where there is no reasonable alternative to an ambulance response, to receive a response as they usually would on a non-strike day. The Government proposes to reach voluntary agreement in relation minimum service levels for schools and colleges and has written to union leaders to invite discussion. In relation to universities, it has announced that it will launch a consultation focusing on stronger protections for final year students, key cohorts or those studying specialist subjects. This consultation has not been published yet. 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. In its **response**, the Government set out the changes to the Code of Practice. The updated Code proposes four 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, 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	patient transport services are due to come into force before the end of 2023. Parliamentary approval for the updated Code of Practice is expected in mid-December 2023.

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		does not undermine any of the reasonable steps and corrects any actions by union members and officials which may do so. The updated Code of Practice now needs approval from both Houses of Parliament, but the Government expects it to come into force in mid-December. Consequential amendments to the Picketing Code (under s205 TULRCA) will now be made and the Government has also published non-statutory **guidance for employers, trade unions and workers on issuing work notices.** The guidance sets out the steps and considerations for preparing and issuing a work notice as well as guidance on consulting with unions and notifying workers. Labour remains opposed to the Act and say they will repeal it if it gets into power and Scottish ministers have announced they will refuse to co-operate with the new regulations.	
6.	Regulations will be required	**Increase in National Living Wage (NLW) and National Minimum Wage (NMW)** From 1 April 2024 the NLW will apply to all workers **aged 21 and over** and will rise from £10.42 to **£11.44** per hour. NMW rates will also rise: • from £7.49 to **£8.60** for those aged 18-20, • from £5.28 to **£6.40** for those aged 16-17; and • from £5.28 to **£6.40** for Apprentices. The almost 10% increase in the NLW up to £11.44/hour will apply to 21 year olds for the first time and will mean that the minimum salary of a worker working 40 hours per week will be near £24,000. Employers will face higher wages bills, most likely including the knock-on effect of higher wages for more senior employees to maintain an appropriate pay differential. The increase will also bring more workers closer to the NLW / NMW limits. Employers will need to be alive to the common risk areas that create NLW / NMW underpayment, especially within the context of different job roles or sections of the workforce that were not perhaps previously in scope of the NLW / NMW legislation.	1 April 2024
7.	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	Expected to come into force in May 2024. Consultation on a statutory code of practice expected later this year.

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		the date received. A consultation on a statutory code of practice on the fair and transparent distribution of qualifying tips is expected later this year.	
8.	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 come into force in July 2024.

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9.	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. 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. On 25 October 2023, ACAS issued a consultation and published its draft statutory Code of Practice on handling requests for a predictable working pattern. The procedure for dealing with requests for a predictable working pattern is similar to the procedure for making a flexible working request and the draft Code is set out in two sections which deal separately with requests from workers to employers and requests from agency workers to agencies or hirers. The consultation closes on 17 January 2024.	The Bill received Royal Assent on 18 September 2023. The Act and secondary legislation are expected to come into force in September 2024. Consultation on draft ACAS Code of Practice on handling requests for a predictable working pattern closes on 17 January 2024.

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10.	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".
11.	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 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".	Entitlements expected to be delivered in April 2025.
12.	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	Regulations will be laid down "in due course".

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		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".	
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.	The Worker Protection (Amendment of Equality Act 2010) Act 2023	**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) Act 2023** received Royal Assent on 26 October 2023 and will come into force in around October 2024. During its progress through Parliament the then 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	The Worker Protection (Amendment of Equality Act 2010) Act 2024 received Royal Assent will come into force in around October 2024.

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		steps to prevent that harassment. The House of Lords voted to amend the Bill to remove the clause which would have made employers liable for third party harassment and the Government accepted the amendment. This has meant that the position on third party harassment has not changed under the Equality Act 2010. It was also noted at the time 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 Act will come into force in around October 2024.	
15.	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: • Communicating the wish to change terms and conditions.	The consultation closed on 18 April 2023 no further timeline given yet.

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		• 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 but no timetable has been given for a response or the publication of the final Code of Practice.	
16.	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	

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		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". • 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.	
17.	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. 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.	TBC

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
		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.	
18.	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 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.	The Bill was withdrawn on 27 June 2023.
19.	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	Phase 1 completed on 31 August 2022. No timetable yet for Phase 2

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
		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.	
20.	Employment Tribunals and Employment Appeal Tribunal (Composition of Tribunal) Regulations 2023.	**Employment tribunals and EAT: new regulations on panel composition** The Regulations make changes to the panel composition in the employment tribunals and EAT. In the employment tribunal the Senior President of Tribunals (SPT) will decide on whether the panel consists of one, two or three panel members. In the EAT cases will be heard by an employment judge sitting alone unless the SPT determines otherwise. The Regulations were laid before Parliament on 14 November 2023 and will come into force on a date yet to be determined.	The Regulations were laid before Parliament on 14 November 2023 and will come into force on a date yet to be determined.
21.	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.	

NO.	ACT OR STATUTORY INSTRUMENT	SUMMARY AND IMPACTS	IMPACT DATE
		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	

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		they are supporting employees experiencing menopause symptoms together with government guidance for employers on how best to support their employees. • On 18 October 2023, the Government published a policy paper providing a summary of the work its Menopause Employment Champion has done and signposting guidance for employers. Also, an all-party Parliamentary group published a Manifesto for Menopause calling on all political parties to commit to seven reforms including a requirement for large employers to introduce a menopause action plan to support employees, providing guidance for SMEs and introducing tax incentives to encourage employers to integrate menopause into occupational health.	
22.	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. 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. 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. On 18 September 2023, the Government provided an update of its work to date towards implementation.	Ongoing

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 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.	Heard by the EAT on 29 April 2022. Awaiting judgment.
2.	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.
3.	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 hearing is scheduled to be heard by the EAT on 22 May 2024.	Hearing scheduled to be heard by the EAT on 22 May 2024.
4.	HMRC v Professional Game Match Officials Ltd	**Employment status: Are match referees employees?** 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	Heard in the Supreme Court on 26 June 2023.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		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.	
5.	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. Awaiting a hearing date in the Court of Appeal.	Awaiting a hearing date in the Court of Appeal.
6.	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.*

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
7.	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.
8.	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.
9.	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.
10.	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	Permission to appeal to the EAT has been granted, awaiting listed for a preliminary

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		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, listed for a preliminary hearing on 20 February 2024.	hearing on 20 February 2024.
11.	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 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.
12.	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 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.	Due to be heard by the Supreme Court on 24 and 25 January 2024.
13.	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	Court of Appeal hearing for 2 February 2023 vacated. A new hearing date is awaited.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		amount to gross misconduct as given the size of the employer and its administrative resources, the respondent had acted reasonably.	
14.	Royal Parks Ltd v Boohene	**Indirect Race discrimination: pool for comparison too narrowly drawn** The EAT held that the pool for comparison for establishing group disadvantage was drawn too narrowly. The Employment Tribunal should not have made comparison between direct employees of the Royal Parks Ltd and the claimants who worked on a toilet and cleaning contract as this improperly excluded from the comparison pool all other outsourced worker carrying out work for the Royal Parks Ltd. An appeal to the Court of Appeal is due to float on 20 or 21 February 2024.	An appeal is due to float on 20 or 21 February 2024
15.	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. An appeal is due to be heard in the EAT on 14 May 2024.	An appeal is due to be heard in the EAT on 14 May 2024.
16.	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	The case has been remitted to the Employment Tribunal for a re-hearing of the issue.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		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.	
17.	Lutz v Ryanair DAC	**Employment status: Pilot was a worker and agency worker not self-employed contractor** An employment tribunal held that a pilot placed with Ryanair by MCG Aviation Ltd was a worker for MCG and an agency worker under the Agency Workers Regulations 2010 and not a self-employed contractor. An appeal was heard in the EAT on 23 October 2023, judgment awaited.	An appeal was heard in the EAT on 23 October 2023.
18.	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.
19.	Corby v ACAS	**Belief discrimination: opposition to critical race theory** An employment tribunal held that a claimant's opposition to critical race theory is a protected belief under the Equality Act 2010. The claimant's beliefs passed all five stages of the *Grainger* test and were therefore capable of protection under the EqA. An appeal has been lodged.	An appeal has been lodged.
20.	Bathgate v Technip UK Ltd	**Settlement Agreement: Settlement of future claims** The EAT held that a qualifying settlement agreement cannot settle future claims unknown to the parties at the time of entering into the agreement. An appeal was heard by the Inner House Court of Session on 22 November 2023.	An appeal was heard by the Inner House Court of Session on 22 November 2023.
21.	Charalambous v National Bank of Greece	**Unfair dismissal: decision maker in misconduct dismissal** The EAT held that an employee's misconduct dismissal was not unfair when the decision to dismiss was reached by a more senior manager than the one who chaired the disciplinary hearing which was in accordance with the employer's handbook and they consulted with the	Permission to appeal to the Court of Appeal was granted to be heard by 14 October 2024.

NO	CASE	SUMMARY AND IMPACTS	CURRENT STATUS
		disciplinary chair before reaching their decision. Permission to appeal to the Court of Appeal was granted to be heard by 14 October 2024.	
22.	Sellers v British Council	**Unfair dismissal: Is the investigation sufficient?** An employment tribunal found that the dismissal was unfair where there was an inadequate investigation into an alleged sexual assault. The investigation flaws included a failure to identify the existence of contemporaneous documents, a failure to retrieve relevant documents and a failure to identify the relevant circumstances of the alleged assault among other flaws. Permission to appeal to the EAT has been sought and the case is listed for a preliminary hearing on 30 January 2024.	Permission to appeal to the EAT has been sought and the case is listed for a preliminary hearing on 30 January 2024

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