

Looking back on 2022: an employment law update



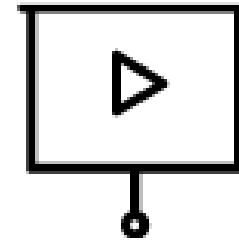
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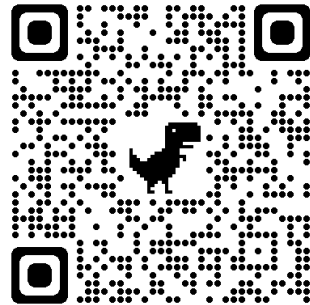


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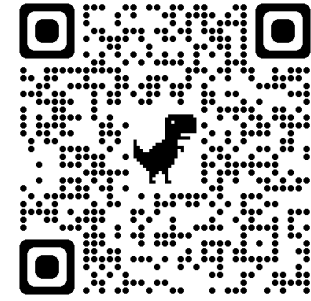


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Introduction & Connect with Us



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Agenda

1. Disability Discrimination
2. Redundancy and fire/re-hire
3. Holiday
4. Working time
5. Menopause
6. Pay gap
7. Sickness absence – fit note update
8. Exclusivity clauses and zero hour contracts
9. Flexible and hybrid working
10. Discrimination and gender critical beliefs
11. Agency Workers
12. What's in store for 2023?
13. Questions

Disability discrimination

Case updates

- Conduct arising as a consequence of disability: *Morgan v Buckinghamshire Council* (EAT)
- Reasonable adjustments in redundancy situation: *Hilaire v Luton Borough Council* (EAT)
- Long Covid as a disability: *Burke v Turning Point Scotland* (ET) – *Not binding*

Other

Support with Employee Health and Disability Service – October 2022

Redundancy and fire/re-hire

In the News!

- P&O Ferries Ltd – Press interest in procedure, criminal sanctions on notification
- Proposed new statutory code of practice on fire/rehire – Consultation open now closes in April 2023

Case updates

- Injunctions to prevent fire/rehire: *USDAW v Tesco (CA)* – Leave to appeal to SC granted

Holidays

Case updates

- The “Percentage Method” or 12.07% rule incorrect: Harper Trust v Brazel (SC)
- No opportunity to take the paid leave: Smith v Pimlico Plumbers (CA)
- Gap of more than three months: Chief Constable of PSNI v Agnew (NICA) – Not binding and awaiting SC judgment

Other

Consultation on calculating holiday entitlement for part-year and irregular-hours workers – Closes in March 2023

Working time

Changes to the Law

- Working Time Regulations (Amendment) Bill: Reduce maximum working week to 32 hours
- 2nd reading on 23 February 2023

In the News!

- Pilot of 4 day week ended in Dec 2022
- Results expected to be published this year.

Menopause

Changes to the Law

- The Women and Equalities Committee published a report on menopause in July 2022
- The All-Party Parliamentary Group on Menopause calls for policy reform in October 2022
- Government refuses to add a protected characteristic
- Claims still have to be brought as sex/age/disability discrimination

Helpful Guidance

- ACAS, UNISON, British Menopause Society, CIPD and TUC
- NHS guidance on supporting employees through menopause - <https://www.nhsemployers.org/articles/menopause-and-workplace>

Pay Gaps

Changes to the Law

Gender

- No review in 2022 as promised.
- Currently <250 employees are exempt
- Government plans to extend threshold to 500 employees

Ethnicity

- March 2022 – Government announce that mandatory reporting will not be introduced.
- Voluntary reporting will require employer to publish a diagnosis and action plan.

Disability

- No plans to introduce mandatory disability pay gap reporting

Sickness absence

Changes to the Law

- Two amendment regulations in 2022
- Medical evidence relevant to sickness absence
- Fit notes can now be issued by nurses, occupational therapists, pharmacists and physiotherapists.
- Must be treating the patient in the NHS
- The requirement for wet ink signature has been removed
- Fit notes can be issued digitally

Exclusivity clauses and zero hour contracts

Changes to the Law

- New Regulations
- Came into force from 5 December 2022
- Applies to workers and employees
- Extends prohibition on exclusivity clauses
- Applies where the average net guaranteed weekly income is below or equivalent to the Lower Earnings Limit (currently £123 per week)
- Right not to be unfairly dismissed or subjected to a detriment for failing to comply with an exclusivity clause

Exclusivity clauses and zero hour contracts

- Exclusivity clauses in contracts prevent employees from working for other employers.
- The Exclusivity Terms for Zero Hours Workers (Unenforceability and Redress) Regulations 2022 came into force from 5 December 2022 and applies to workers and employees.
- Exclusivity clauses are now unenforceable in employment contracts where the average net guaranteed weekly income is below or equivalent to the Lower Earnings Limit currently £123 per week which will provide low paid workers the choice to work multiple jobs if they wish, to give them more flexibility over when and where they work.
- The legislation also gives employees the right not to be unfairly dismissed, and workers the right not to be subjected to a detriment, for failing to comply with an exclusivity clause and to claim compensation.

Considerations for employers

Flexible and hybrid working

Changes to the Law

- Government announced changes to flexible working law.
- Changes expected to take place in 2023 include:
 - removal of the 26-week qualifying period
 - requiring employers to consult with their employees before rejecting a flexible working request
 - allowing 2 flexible working requests in any 12-month period
 - requiring employers to respond to requests within 2 months rather than 3
 - removing the requirement for employees to set out how the effects of their flexible working request might be dealt with by their employer
- Employment Relations (Flexible Working) Bill 2022-23
- Legislative changes are not confirmed yet

Belief Discrimination and gender critical beliefs

Case Updates

- Gender critical beliefs are protected: *Forstater v CGD Europe and others* (EAT)
- Inappropriate manifestations of a belief unlawful: *Mackereth v DWP* (EAT)

Agency Workers

Case Updates

- Right to apply for vacancies: *Kocur v Angard Staffing Solutions Ltd* (CA)
- The right is limited to notification only and does not extend to a right to apply and or be considered for the notified post.
- Supreme Court decision is due 7 December 2023

What is in store for 2023?

The Retained EU Law (Revocation and Reform) Bill

- If passed, certain EU laws can be disposed of/replaced.
- Sunset clause is included which will see many EU laws not restated or amended disappear by 31st Dec 2023.
- Potentially impacts on Working Time Regulations, the Maternity and Parental Leave Regulations, the TUPE Regulations, and the Agency Worker Regulations.
- Deadline for implementation is likely to be relaxed to 2026 but consultations and proposals on changes expected this year.

What is in store for 2023?

Private Member's bills / Employment Bill

- No progress on EB but elements of original Bill are found in several Private Members' Bills which have Gov backing:
- The Protection from Redundancy (Pregnancy and Family Leave) Bill
- The Carer's Leave Bill
- The Neonatal Care (Leave and Pay) Bill
- It is also expected that the Miscarriage Leave Bill and the Fertility Treatment (Employment Rights) Bill will progress, providing a right to paid bereavement leave and paid time off for fertility treatment respectively
- Worker protection (Amendment of Equality Act 2010) Bill

What is in store for 2023?

New rates and limits

From 1 April 2023, the new National Minimum Wage hourly rates will rise to:

- From £9.50 to £10.42 for workers aged 23 and over;
- From £9.18 to £10.18 for workers aged 21 to 22;
- From £6.83 to £7.49 for workers aged 18 to 20; and
- From £4.81 to £5.28 for workers aged 16 or 17; and
- From £4.81 to £5.28 for apprentices.

From 2 April 2023:

- SSP will go up from £99.35 to £109.40

From 6 April 2023:

- Statutory maternity, adoption, paternity and shared parental and parental bereavement pay will rise from £156.66 to £172.48.

The weekly earnings threshold that employees must meet to be eligible will remain at £123 per week.

Any Questions?



What's coming up...

- **Recruiting your first employee – 21st February 2023**

Sign up here - <https://www.machins.co.uk/events/>



Get in touch!

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