



Human Resources



Do you employ staff?

Employment Law Update - December 2023

After a long lull in the employment law landscape, changes are now beginning to take place. If you are a retained client, and feel overwhelmed by reading this update, don't worry, we will keep you covered by updating your HR Documentation and advising you correctly, when queries arise. We will also remind you, on a monthly basis, of the changes that lie ahead.

There may be further changes announced soon, which are not included in this newsletter (due to the timing of this newsletter being issued and no forewarning from the Government) which we will update you on, in due course, in the future.

So, what lies ahead

The Retained EU (Revocation and Reform) Act 2023 (REUL)

The Retained EU (Revocation and Reform) Act 2023 (also known as the *retained EU law bill* or *REUL*) received Royal Assent (officially became law) in June 2023. Its objective is to restate, amend or repeal specific EU law, following our departure from the European Union on 31 January 2020.

As such, the principle that EU law has authority over UK law will end on 31 December 2023, and some elements of REUL will come into force from 1 January 2024, with other elements being introduced periodically thereafter, throughout 2024 and possibly beyond.

From 31 December 2023

Instead of a sunset clause, the above Act was amended so that it will now repeal only 800 specific regulations from 31 December 2023. These regulations do not include any significant employment rights but there are three regulations in the employment field (which have limited relevance now that the UK has ceased to be an EU member state) that will be repealed from 31 December 2023, these are:

- The Posted Workers (Enforcement of Employment Rights) Regulations 2016
- The Posted Workers (Agency Workers) Regulations 2020
- The European Cooperative Society (Involvement of Employees) Regulations 2006

From 1 January 2024

In line with the Retained EU (Revocation and Reform) Act 2023, the following changes will take effect from 1

January 2024:

Draft Equality Act 2010 (Amendment) Regulations 2023

Subject to parliamentary approval of the above, the Equality Act 2010 will be retained and slightly amended to include specific principles which resulted from EU case law. These principles include:

- Protecting a woman from discrimination based on her pregnancy, or maternity, or when breastfeeding. Discrimination on the grounds of breastfeeding will fall under the protected characteristic of sex.
- Protecting against associative indirect discrimination where a person, without a relevant protected characteristic, suffers the same disadvantage as a person with that protected characteristic, because of indirect discrimination by association.
- Direct discrimination to also include statements made about not wanting to recruit someone with a certain protected characteristic.
- The idea that a 'single source' comparator (for establishing equal pay) could potentially work for a different business, if the 'body' responsible for setting terms is the same i.e., the terms of employment set, are attributable to a single source.
- The definition of disability to be amended (when considering *day-to-day* activities) to 'a person's ability to participate fully and effectively on an equal basis with other workers'.

Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023

Again, in line with the Retained EU (Revocation and Reform) Act 2023, the above regulations have been passed and will come into force from 1 January 2024, unless different dates are specified below. The regulations will cover:

Holiday

- Rolled-up Holiday Pay (RHP); the practice of paying holiday for workers who work irregular hours or who work for part of the year only (atypical workers), will be made lawful again which will mean that employers can avoid having to keep detailed records to calculate holiday pay and can instead pay workers upfront. The calculation for holiday entitlement will revert to 12.07% of hours worked in each pay period. This will apply for employers with a holiday leave commencing after 1 April 2024, or if employers operate a January to December holiday year, then this will apply from 1 January 2025.
- In relation to Holiday Pay; there will be a new definition of 'normal remuneration' and what it applies to. UK workers are entitled to a minimum of 5.6 weeks' holiday per year (pro-rata for part-time employees). This comprises of 4 weeks' Working Time Directive (WTD) holiday and an additional 1.6 weeks' Working Time Regulations (WTR) holiday. Technically, the calculation of holiday pay for each type of leave differs. WTD holiday should be based upon 'normal remuneration' and WTR holiday should be based upon 'basic pay'. With effect from 1 January 2024 'normal remuneration' will include:
 - Payments including commission payments, intrinsically linked to the performance of tasks which a worker is contractually obliged to carry out.
 - Payments for professional or personal status relating to length of service, seniority, or professional qualifications.
 - Payments such as overtime payments which have been regularly paid to a worker in the 52 weeks preceding the calculation.
- Carry-over of Holiday; the Working Time Regulations will be amended to expressly allow in UK law for the carry-over of annual leave when a worker is unable to take their leave because of absence due to maternity or other family related leave or sick leave.
- Carry-forward of Holiday; will provide workers with the right to carry forward holiday where, in any leave year, an employer fails to:
 - Recognise a worker's right to holiday under this regulation or to provide payment for the holiday.
 - Provide a reasonable opportunity for the worker to take their holiday (or encourage them to do so).
 - Inform the worker that any leave not taken by the end of the leave year, which cannot be carried forward, will be lost.

Working Time Record Keeping

- Requirement to keep 'precise' records of 'time worked' will ease and the previous requirement to keep 'adequate' records will be retained.

TUPE

- From 1 July 2024, TUPE consultation requirements will be slightly amended so that employers transferring fewer than 10 employees where no trade union is formally recognised, or employers transferring more than 10 employees where fewer than 50 employees are employed in total, will be permitted to 'directly consult' with employees without the need to elect representatives to collectively consult.

From April 2024

National Living Wage (NLW) Increase

The National Living Wage age band will be expanded to including workers aged 21 and over and will increase to £11.44 per hour.

National Minimum Wage (NLW) Increases

The National Minimum Wage rates will increase as follows:

- Apprentices under 19 or over 19 and in the first year of their apprenticeship, the NMW rate will increase from £5.28 to £6.40 an hour.
- Young Workers aged 16 and 17, the NMW rate will increase from £5.28 to £6.40 per hour.
- NMW rate for workers aged 18 and 20 will increase from £7.49 to £8.60 per hour.

The following increases are yet to be confirmed:

Family Friendly Payments Increases

Family Friendly Payments i.e., Statutory Maternity Pay (SMP), Statutory Adoption Pay (SAP), Statutory Shared Parental Pay (ShPP), Statutory Paternity Pay (SPP) and Statutory Parental Bereavement Pay (SPBP) will increase from £172.48 to £184.03 per week.

Statutory Sick Pay Increase

Statutory Sick Pay (SSP) will increase from £109.40 to £116.75 per week, with the Lower Earnings Limit (LEL) remaining at £123 per week.

The Flexible Working (Amendment) Regulations 2023

The above regulations will come into force on 6 April 2024. They amend previous flexible working regulations so that the right to make a flexible working application becomes a 'day one right', without the requirement to be continuously employed for 26 weeks. In addition, the permitted number of statutory requests an employee can make per 12-month period, will be increased from one to two.

And Finally, we wish you a lovely Christmas and health and happiness in 2024.

Also, just to let you know Kirsty will be leaving Hassle Free HR Limited on 31 December 2023 to take up new employment and develop her HR career in Hereford and Worcester Primary NHS Care Trust.

How Can We Help?

If you have any queries relating to the content of this newsletter, or any other HR related topic, please do not hesitate to contact us at hradvice@hasslefreehr.co.uk.

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