

# A Review of Planned Changes in UK Employment Law ?

Labor & Employment Workforce Watch

## WRITTEN BY

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After six years of the UK political agenda being dominated by Brexit, the COVID-19 pandemic, and significant political upheaval, the UK has returned to more normality and, with that, some significant expected employment law changes. Although still progressing through Parliament and subject to amendment and final approval, the following changes are expected to come into effect during 2023:

- **Neonatal leave:** Permits all employees who are parents up to 12 weeks of leave to spend time with their baby who has either been born prematurely (before 37 weeks) or is sick and receiving at least 7 days of professional neonatal care within 28 days of birth. The leave must be taken in blocks of one week, and for those who have at least 26 weeks' service, the leave will be paid at a statutory rate yet to be set (likely to align with the statutory maternity rate of £156 per week).
- **Carer's leave:** Permits all employees from inception of employment to take up to one week's unpaid leave to provide or arrange for long term care for a dependent, typically an aging or disabled parent or other close family member. The leave can be spread over five whole or ten half days and can be taken for an illness or injury that will (or likely will) require three months or more care, for a covered disability under the Equality Act, or where it is connected to old age.
- **Flexible working:** Permits employees to request an altered working proposal on the first day of employment, without having to identify any effects on the business arising out of the proposal. Employers can still refuse the arrangement on the same prescribed grounds (e.g., additional cost, detrimental effect on ability to meet customer demand, and inability to reorganize work among existing staff), but the employer must consult with the employee before making a decision, with the burden on the employer to demonstrate why the request is not justifiable. The amendments also allow employees to make two requests in any 12-month period. Because employees will gain these rights on the first day of employment, employers may want to address working patterns in the recruitment process and prior to employment.
- **Enhanced protection from redundancy for those on family leave:** Currently, while conducting layoffs, employers must give pregnant employees priority for redeployment by offering such employees an alternative role if a suitable one exists. The period for which this duty applies will be extended beyond the return to work date. It is anticipated to be extended for an additional six months, giving a total period of enhanced protection of around two years (including pregnancy and up to 12 months maternity leave). These rights will also be extended to those on adoption leave or on shared parental leave.
- **Protection from third party sexual harassment:** The Government is introducing new regulations that require employers to take reasonably practicable steps to prevent sexual harassment committed by third parties (such as customers or clients). What "reasonably practicable" steps will be required remains to be seen, but it is likely that a code of practice will be published setting out examples and guidance for employers.
- **Duty to prevent sexual harassment:** There will be a proactive duty on employers to take reasonable steps to prevent sexual harassment, likely by implementing an education and training program for its workforce that is repeated regularly and ensuring timely and thorough responses to harassment allegations. Employers who fail to take reasonable steps to prevent sexual harassment may be subject to fines (up to 25% of owed compensation) in the event of a sexual harassment lawsuit. In addition, the Equality and Human Rights Commission will be given statutory enforcement powers, although these will most likely be used very sparingly.

- **Data privacy rights:** Under the Data Reform Bill, the threshold for refusing to supply an employee (or other data subject) with their personal data will be lowered from “manifestly unfounded or excessive” to “vexatious or excessive.” In practice, this should have little effect unless the request is obviously vexatious. In addition, the Information Commissioner is seeking the views of employers about employee monitoring in the workplace and about how employee health data is used.
- **Brexit bonfire:** By default, all EU-derived legislation will be repealed on December 31, 2023 unless specifically retained, and the supremacy of existing EU law will be eliminated. It is unknown which aspects of EU law the Government will retain, but the bonfire could create significant uncertainty for employers with regard to working time restrictions, health and safety matters, paid holidays, the rights of part-time, fixed-term, and agency workers, parental leave rights, and, in connection with the sale of a business, whether the seller’s employees will transfer to the buyer. Any retention decisions will be politically driven, but with some 4,000 individual pieces of legislation requiring review and decisions to be made on whether to repeal, retain, or amend them, it is no understatement to say that there will be a sizeable degree of uncertainty and potential change.

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