

# The Agenda podcast by Lewis Silkin: In-House Employment Lawyers Coffee Break

The new and upcoming changes to employment law that will be on the agenda for in-house employment lawyers in 2024.

- Tarun Hello and welcome to the In-House Employment Lawyers Coffee Break. I'm Tarun Tawakley.
- Colin and I'm Colin Leckey
- Tarun For those of you still getting used to the format, this is designed for you to enjoy over a 10-minute coffee break, while we talk through the latest developments and practical takeaways for the month.  
Although, in a break from tradition, given how momentous 2024 could be for employment law, we're going to start by looking at the changes that are already in force and what you've got to look forward to later in the year.  
Colin, do you want to kick us off with what's already happened?
- Colin So, while you were watching the fireworks and toasting the start of 2024 with a glass of champagne, there were some significant changes to the UK legal system that you may have missed, because that was the point at which the Retained EU Law (Revocation and Reform) Act finally came into effect, ending the supremacy of EU law over UK law. So, what does it all mean for employment lawyers? Well in the round, these post-Brexit changes to UK employment law, don't add up to the sort of the bonfire of EU employment rights that was being talked about at one time, when it was proposed that all EU derived statutory instruments, so the Working Time Regs and TUPE and so on, would fall away unless an express decision had been made to retain them. In the end, the government decided to do things the other way around and keep all EU derived laws, unless it had decided to scrap them. And from an employment law perspective, nothing particularly significant fell away, just some marginal stuff to do with posted workers. Nothing that really shifts the dial.  
So, what it really means then from an employment law perspective is change is afoot in terms of how we go about interpreting EU derived case law and any case law decision from the ECJ or, indeed, the domestic courts, which was dependent on some sort of principle of European law, no longer governs. And we're expecting case law battles in the years to come to work out precisely which cases have survived, and which hasn't and what the impact of that is going to be.  
But a couple of things that have been clarified by some late legislation from the government in the latter part of last year, we've got new laws on holiday entitlement and pay, which effectively require employers to maintain full normal pay levels for at least 4 weeks of an individual's holiday entitlement and allow workers to carry forward unused holiday entitlement in some circumstances. So, that means that if you pay overtime commission or other allowances to your workers, you should check that you're factoring this into their holiday pay.  
There are also regulations amending the Equality Act that have come into effect, which preserve the effects of some EU case law. But in some cases, look a bit more like new law because they involve EU cases that haven't actually been applied by the UK appeal courts.  
There's no particular action that you need to take as a result of these but be aware of the widened scope for claims in some areas such as indirect discrimination, recruitment, and workplace breastfeeding, and keep an eye on future case law developments as well.  
There are also some modest steps to do away with EU case law on TUPE consultation for microbusinesses with fewer than 10 transferring staff and working time record

keeping obligations so you no longer need to keep adequate records of working time as far as the Working Time Regs are concerned. Though, of course, you may need to do so for other purposes, not least showing that you're complying with minimum wage obligations.

So, Tarun, shall we move forward in time now and look at what's coming up in April, and I think you're going to talk us through that?

Tarun Yes, absolutely! I'm not quite going to inject the enthusiasm of you, with your talk of bonfire and fireworks, but there are some exciting changes coming down the track, nonetheless!

Starting with the 1<sup>st</sup> of April, some changes to the national living wage, which will jump to £11.44 per hour, up from £10.42. This will be the largest ever increase in the minimum wage in cash terms, and the first time it has increased by more than £1. This will narrow the gap between the legal minimum and the so-called real living wage. As if that wasn't exciting enough, from the same day, there will be the new rules in place for payment of holiday pay for workers with irregular hours who fall within this definition, will be entitled to receive holiday pay at 12.07% of the hours worked, and could be paid that holiday pay on a rolled-up basis, i.e. as a supplement to their basic pay if the employer so chooses.

If you engage these type of workers, these changes are significant and you should think about taking advice on how to update your approach. In particular, if you've got individuals that are moving from full-time arrangements where you have a more generous company holiday entitlement, and you're thinking about agreeing term-time working contracts, to make sure you don't inadvertently fall foul of part-time worker discrimination claims. For more information on these changes to holiday pay, please do go back and listen to our November podcast.

Slightly later in the month, on the 6<sup>th</sup> of April, workers will be able to ask for flexible working from day one of their employment.

This change is expected to be introduced alongside other more limited flexible working reforms and may raise the prominence of the right to request flexible working at a time when some employers are taking a tougher approach to office attendance. But ultimately, these changes are limited and whether or not to accept or decline a request, remains in the hands of an employer.

A new right to carer's leave also comes into effect on the 6<sup>th</sup> of April. From this date, employees will have a new statutory right to a week's unpaid leave to care for a dependent. Whatever the size of your business, you're likely to employ some workers with caring responsibilities, even if those individuals haven't previously disclosed that they are a carer, and you should think about updating or creating appropriate policies and systems for record keeping to track the number of days taken, and to ensure that your managers are aware of this new right.

Finally, I wanted to flag some changes that are coming in terms of protection and priority status for redeployment opportunities and redundancy situations, which apply to individuals on maternity, adoption, and shared parental. These changes will materially increase the number of employees with protection. For example, fathers taking just 6 weeks of shared parental leave will become eligible for 18 months of protection. For those of you considering or planning restructuring exercises in 2024, you'll need to take careful thoughts of the implications of these new protections and the practical issues that may arise.

Colin, I think I might hand on to you to shed some light on what's coming towards the latter part of the year.

Colin Absolutely! So, you're now back from your summer holidays, the leaves are turning a russet colour and beginning to fall from the trees and Tarun is huddled round a bonfire with his chai latte, and if you don't know what I'm referring to do have a listen to our first of these podcasts.

So, September 2024 and the new statutory right to request a predictable working pattern comes into effect giving everyone the right to request, although not necessarily to have agreed, a more predictable contract. You're going to need new policies and

procedures in place to make sure that you satisfactorily comply with any requests that you receive.

In October, 26<sup>th</sup> of October to be precise, the Worker Protection Act comes into effect and that's where you, as an employer, have to start taking proactive steps to prevent your employees from being sexually harassed at work, on pain of potential investigations and penalties being imposed by the Equality and Human Rights Commission if you fail to do so, and also that having an adverse implication for you in the event of tribunal claims.

We don't have a date yet, but at some point this year, perhaps in Autumn, the government's going to pass its Data Protection and Digital Information Bill and what that will do is maintain data protection adequacy with the EU (or so the government hopes), while also relaxing in a few areas that may benefit employers, including a less expansive definition of personal data, and amen to the following, a new ability to ignore vexatious or excessive data subject access requests.

Is the government going to do anything about non-competes? That's the final thing I'm going to say about the outgoing administration. Things have all gone rather quiet on that front. You may remember that the government did announce an intention to cap the length of post-employment non-compete clauses at 3 months but as things stand there's been no mention of legislation to achieve that.

I referred to the outgoing administration and that brings us on to the final topic that at some point, maybe in November, we're expecting the general election to take place, so if Labour comes in, Tarun, is it going to make any difference for employment lawyers?

Tarun Well, of course, we can't be sure because nothing's been written on the side of a bus, yet! But we have seen some policy proposals from the Labour party in terms of what it is they're intending to bring in, within their first 100 days. The headlines include some pretty stark changes to employment law:

- Firstly, a right not to be unfairly dismissed from day one of employment, scrapping the current two-year qualifying period. Now, while there has been some talk about permitting fair and reasonable probation periods, all of that still needs to be worked out.
- They've suggested they're going to implement a simple two-part framework for employment status, abolishing the 3 categories we have now. Again, there's not a huge amount of flesh on these particular bones but it will be interesting to see exactly how the dividing line will work and what, if anything, they will do to rationalise the tests across employment law and tax law.
- There is also discussion about a ban of zero-hours contracts and strengthened rights for Trade Unions, including a right of entry into the workplace.
- Finally, there's discussions around strengthening harassment laws and the introduction of new reporting obligations on ethnicity and disability.

Taken in the round, this has the potential to be one of the biggest shakeups to employment law in our working careers. And it's important for employers to start thinking about the implications, and thinking about what opportunities may be open to address underperformance or other issues that may otherwise bubble under the surface and fall to be addressed under the new laws.

Colin So, plenty to keep us busy then in the years to come!

Well, that's all from us. Thank you so much for joining us today for this In-House Employment Lawyers Coffee Break! We'll be back next month, in the meantime if you'd like to be part of our In-House Employment Lawyers Community and if you're not already, please do get in touch.

And we'd also love to know what you thought of today's episode, so please do drop us a line or leave us a review wherever you get your podcasts.

**For more information, please see:**

[Lewis Silkin - What's happening in UK employment law in 2024?](#)

[Lewis Silkin - Holiday pay regulations and the Worker Protection Act - In-House  
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