

Employment Law Update

Key cases and legislative changes

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Today's Webinar

01 What to expect in 2023

- Employment Tribunal update
- National Minimum Wage increase
- King's Coronation
- Holiday
- Harassment Bill
- Flexible Working Bill

02 Key Case Law Decisions

- Recent cases
- Cases to look out for in 2023



Employment Tribunal Update: Waiting Times

Employment Tribunal Waiting Times

Waiting Time for Hearings

- Average time between a Claimant presenting their ET claim and their first hearing:

2008 – 2018	30 weeks
2019	39 weeks
March 2021	49 weeks

- “First Hearing” may not mean a final liability hearing
- Significant regional variations in waiting times



Employment Tribunal Update: Cloud Video Platform (CVP)

Usage of CVP

- Video hearings are still commonly being used following COVID-19
- **1,500 – 1,600 hours** a week on such hearings nationally
- Compared to about 2,500 - 3,000 hours a week at the height of the pandemic

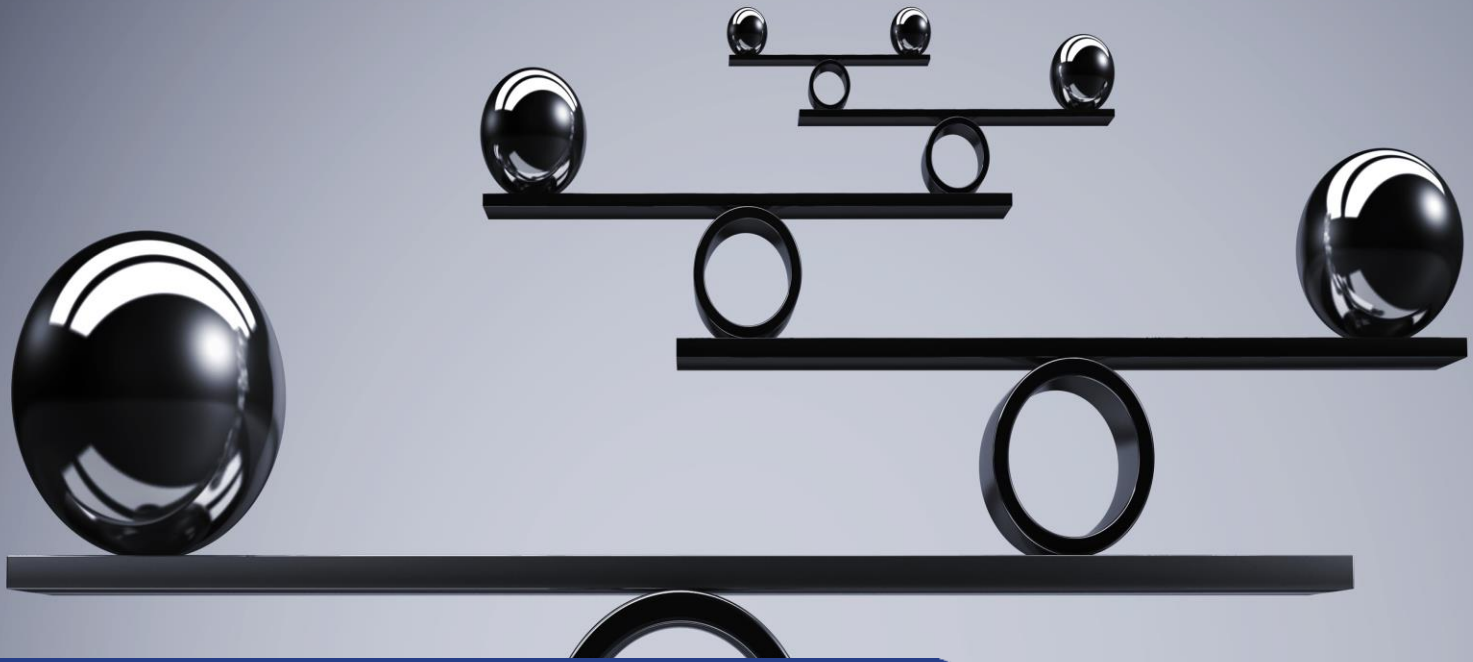


Employment Tribunal Update: Vento Bands

Injury to feelings award

- Lower band **£1,100 - £11,200** for less serious cases
- Middle band **£11,200 - £33,700** for cases which do not merit an award in the upper band
- Upper band **£33,700-£56,200** for most serious cases
- Amounts in **excess of £56,200** in exceptional cases

From 6 April 2023



Employment Tribunal
Update: Compensation
limits increased

Compensation and statutory payments

Increase on limits

- New limit on week's pay increased from £571 to **£643**
- Statutory redundancy payment maximum or basic award increased from £17,130 to **£19,290**
- Compensation award for unfair dismissal increased from £93,878 to **£105,707**

From 6 April 2023



National Minimum Wage increase

National Minimum & Living Wages

2023 Rates - Took effect on 1 April 2023

	Rate from April 2023	Previous rate	Annual increase (%)
National living wage	£10.42	£9.50	9.7
21-22 year old	£10.18	£9.18	10.9
18-20 year old	£7.49	£6.83	9.7
16-17 year old	£5.28	£4.81	9.7
Apprentice	£5.28	£4.81	9.7

The National Minimum Wage (Amendment) Regulations 2023



King's Coronation: Extra Bank Holiday

Employee Entitlement to an Extra Bank Holiday

King's Coronation

- King Charles III Coronation will be on **Saturday 6 May 2023**
- Additional one-off bank holiday on **Monday 8 May 2023** to celebrate
- Entitlement to this extra one-off bank holiday?

Employee Entitlement to an Extra Bank Holiday

First Instance: The Employment Contract

- Depends on the wording of the employment contract
- A contract may allow for:
 1. Annual leave **plus** bank holidays
 2. Annual leave **inclusive of** bank holidays
 3. Annual leave plus bank holidays **normally observed**
 4. A fixed **28 days** holiday per year
 5. Annual leave **plus New Years Day, Good Friday, Easter Monday, early May bank holiday, spring bank holiday Christmas day and Boxing day**

Pay for the Extra Bank Holiday

Pay in the Employment Contract

- If no contractual entitlement employee can be required to work
- Does the contract limit the number of bank holidays paid at a higher rate?

Closing for the Extra Bank Holiday

Employee's position

- Are employees required to take out of their existing holiday allowance?
 - Statutory written notice
 - Min notice x 2 duration of day off
 - 2 days
- Provide as much notice as possible

General allowance

- Min 5.6 weeks' annual leave
- 28 days for full time employees (5 days a week)
- Can include bank holidays



The Harassment Bill

Worker Protection (Amendment of Equality Act 2010) Bill

Background

- Current law prohibits employers from harassing their staff and employers may be vicariously liable for harassment carried out by their employees
- In *Unite the Union v Nailard* it was held that the Equality Act does not cover liability for third-party harassment
- A 2018 Select Committee workplace sexual harassment inquiry criticised gaps in protection and enforcement measures and consultation launched.

Worker Protection (Amendment of Equality Act 2010) Bill

What does it do?

- Creates new legal liabilities for employers
- An employer (A) will be treated as harassing a person (B) if:
 - B is harassed by third parties (includes clients and customers) during the course of their employment
 - The employer fails to take all reasonable steps to prevent third party harassment
- Creates a new duty on employers to take all reasonable steps to prevent sexual harassment of their employees
 - Subject to a 25% uplift by employment tribunal sexual harassment cases if employer failed to uphold this duty

Worker Protection (Amendment of Equality Act 2010) Bill

What stage is it at?

Not imminent.

House of Commons 1st Reading – 15th June 2022

House of Commons 2nd Reading – 21st October 2022

House of Commons Committee Stage – 23rd November 2022

House of Commons Report Stage – 3rd February 2023

House of Lords 1st Reading – 6th February 2023

House of Lords 2nd Reading – 24 March 2023

House of Lords Report Stage – TBC

House of Lords 3rd Reading – TBC

Consideration of Amendments – TBC

Royal Assent – TBC





The Flexible Working Bill

Employment Relations (Flexible Working) Bill

Background

- Under current law (ERA) employees with at least 26 weeks' continuous service have the right to request a change in working hours, relating to either time or location
- Employers must consider these requests in line with a statutory Code of Practice
- Employers are obliged to respond to these requests within 3 months
- One request in 12 months

Employment Relations (Flexible Working) Bill

Background

- In 2021, a Government consultation sought feedback on proposals to reform the right to request flexible working
- A response to the consultation was given in December 2022 in which Government committed to measures identical to those in the current Bill along with making flexible working a day 1 right

Employment Relations (Flexible Working) Bill

What does it do?

- Removes the requirement for employees to explain their application's effects on the employer
- Allows employees to make 2 flexible working requests per 12 months
- Requires employers to consult with the employee before being allowed to refuse an application
- Reduces the deadline for an employer decision on flexible working requests from 3 months to 2 months

Employment Relations (Flexible Working) Bill

What stage is it at?

House of Commons 1st Reading – 15th June 2022

House of Commons 2nd Reading – 28th October 2022

House of Commons Committee Stage – 7th December 2022

House of Commons Report Stage – 24th February 2023 ←

House of Lords 1st Reading – 27th February 2023

House of Lords 2nd Reading – TBC

House of Lords Report Stage – TBC

House of Lords 3rd Reading – TBC

Consideration of Amendments – TBC

Royal Assent – TBC

2) Key Case Law Decisions



Recent cases

Disciplinary Processes

Lyfar-Cissé v Western Sussex University Hospitals NHS Foundation Trust and others [2022] EAT 193

- Not unfair to dismiss an employee after reopening a previously concluded disciplinary matter which resulted in a final written warning
- EAT held that earlier disciplinary outcome can be part of the circumstances to consider whether a dismissal is fair
- Will depend on the circumstances.

Reasonable Adjustments

Hilaire v Luton Borough Council [2022] EAT 166

- Duty to make reasonable adjustments did not arise when a disabled employee refused to participate in a redundancy process interview for a reason not connected to his disability
- Argued he should have been slotted into a role without interview
- EAT took into account effect of slotting him into new role on other potentially redundant employees.

Unfavourable treatment arising from disability

McQueen v General Optical Council [2023] EAT 36

- Claimant's 'meltdowns' at work did not arise from his disability
- 2 disciplinary processes
- After medical evidence and Claimant's impact statement
- assessed it was not a consequence of his disability

Direct Sex Discrimination

Earl Shilton Town Council v Miller [2023] EAT 5

- EAT upheld that employer discriminated against employee because of her sex based on provision of inadequate toilet facilities.
- Tribunal must consider “the reason why” test
- Held that the facilities were inadequate because the employee was a woman.

Age discrimination resulting from expedited redundancy

Mr K Cook v Gentoo Group Ltd [2023] EAT 12

- Claimant was made redundant just before 55th birthday
- Employer ignored usual procedure and sped up the redundancy process to avoid enhanced redundancy payment
- First instance – upheld claim for unfair dismissal but not age discrimination
- EAT – favour of Claimant, ET had not taken into account whether the treatment was a proportionate means of a legitimate aim – cost plus

Union of Shop, Distributive and Allied Workers & Ors v Tesco Stores

- Rehiring under new terms.
- High Court granted injunction preventing Tesco from firing and rehiring some employees.
- Overturned by the Court of Appeal.



Questions

A close-up photograph of a red pushpin stuck into a white calendar grid. The pushpin is positioned over the number 15. Other numbers visible in the grid include 13, 14, 23, and 24. The background is slightly blurred, emphasizing the pushpin and the calendar.

Cases to look out for in 2023

Menopause and disability

Rooney v Leicester City Council

- Case concerning disability and menopause
- EAT overturned ET decision that an employee suffering from significant menopausal symptoms was disabled
- Important case because it will assess how menopausal symptoms fit the disability definition
- EAT's decision to pass the case back to ET already acts as a caution to employers that menopausal symptoms must be taken seriously and could amount to a disability

Holiday and unlawful deduction of wages

Chief Constable of the Police Service of Northern Ireland and another v Agnew and Others

- Awaiting Supreme Court Judgment re gaps of more than three months' would not interrupt a “series” of unlawful deductions from holiday pay.
- Supreme Court's decision will be binding throughout the UK.
- Opening floodgates for historic pay claims?

Agency workers

Kocur v Angard Staffing Solutions

- Do agency workers have a right to apply for vacancies?
- Agency staff were informed permanent staff allowed to apply first.
- Court of Appeal held it didn't breach regulations and agency staff do not have right to apply in the same way permanent staff do.
- To be heard Supreme Court in December 2023.