



Education Matters: Employment Law Update

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Today's Webinar

01 New Legislative Rules and Proposals

- Rates and Limits
- Flexible Working
- Family and Carers leave
- Holiday pay and entitlement reforms from 1 January 2024
- Worker Protection (Amendment of Equality Act 2010) Act 2023
- Stress at Work Guidance
- Mobile phone guidance for schools

02 Case Law Decisions - Round Up



Rates and Limits

Rates and Limits

| National Minimum Wage and National Living Wage | 1 April 2023 | 1 April 2024 |
|---|-----------------|-----------------|
| Apprentices (<i>if under 19 or in first year of apprenticeship</i>) | £5.28 per hour | £6.40 per hour |
| Age 16 – 17 | £5.28 per hour | £6.40 per hour |
| Age 18 – 20 | £7.49 per hour | £8.60 per hour |
| National living wage (21+) | £10.42 per hour | £11.44 per hour |

| | April 2023 | April 2024 |
|---------------------------|------------------|------------------|
| Statutory sick pay | £109.40 per week | £116.75 per week |
| Statutory family payments | £172.48 per week | £184.03 per week |

Rates and Limits – Tribunal Compensation

| Compensation Limits | Previous rate from 6 April 2023 | From 6 April 2024 |
|--------------------------------------|---------------------------------|--|
| Cap on Statutory weeks' pay | £643 | £700 |
| Cap on Statutory redundancy payment | £19,290 | £21,000 |
| Maximum basic award unfair dismissal | £105,707 | £115,115* <i>(or years' gross pay whatever is lower)</i> |

Annual update to Vento Bands

For claims presented on or after 6 April 2024:

- Lower band £1,200 - £11,700
- Middle band £11,700 - £35,200
- Upper band £35,200 to £58,700



Legislation Changes



Employment Rights (Flexible Working) Act 2023

Employment Relations (Flexible Working) Act 2023

- Came into force 6 April 2024
- Changes to the statutory flexible working regime.
- Under the *Flexible Working (Amendment) Regulations 2023*, all employees regardless of length of service have the right to request flexible working.

Employment Relations (Flexible Working) Act 2023

Key provisions include:

- Employees will no longer have to explain what effect their requested change may have on the employer and how any such effect might be dealt with.
- Employees can make two requests (instead of one) in any 12-month period.
- Employers will not be able to refuse a request unless the employee has been consulted.
- Employers will have to make a decision in two months (reduced from three months), subject to agreeing a longer decision period.

Employment Relations (Flexible Working) Act 2023


Is this an option for schools?

- DFE guidance [Flexible working in schools - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/flexible-working-in-schools)
- Employers have a responsibility to consider flexible working requests:
 - fairly
 - in a timely way
 - according to due process based on business need
 - Be mindful of assuming working arrangements will not work out without a sound rationale
- Use the trial periods to test arrangements
- DFE guidance encourages a strategic and whole-school approach to flexible working.

Employment Relations (Flexible Working) Act 2023

What could this look like?

- Late starts or early finishes
- Staggered or compressed hours
- Virtual team meetings
- Shared management responsibilities
- Split classes
- Virtual parent's evenings
- Virtual CPD remotely



Increased protections for
pregnancy, family and
carers

Carer's Leave Act 2023

- Came into force on 6 April 2024.
- This Act introduces a day one right for one week's unpaid leave per year for employees to **provide** or **arrange care** for a **dependant** with a **long-term care need**.
- Dependants include partners, children, parents, people living in the same house as the employees and people who reasonably rely on the employee.

Carer's Leave Act 2023

- Long term care need means if:
 - they have an illness or injury (whether physical or mental) that requires, or is likely to require, care for more than three months,
 - they have a disability for the purposes of the Equality Act 2010, or
 - they require care for a reason connected with their old age.

Carer's Leave Act 2023

- Can be taken in increments of half days, or individual days up to a maximum of one week in total, over a rolling 12-month period.
- Notice requirements, the greater of:
 - (i) twice as many days as the period of leave required, or
 - (ii) three days
- Does the request have to be granted?

Carer's Leave Act 2023

- During period of carer's leave, employee entitled to benefit of all their terms and conditions, apart from right to remuneration, and remain subject to usual obligations
- Protection from detriment and dismissal attributable to the fact that an employee took or sought to take carer's leave.

Paternity Leave (Amendment) Regulations 2024

What do they do?

- Employees can take their two-week paternity leave entitlement as two separate blocks of one week (rather than taking one week in total, or two consecutive weeks)
- Employees can take paternity leave at any time in the 52 weeks after birth (as opposed to in the 56 days following birth)
- Must give 28 days' notice of intention to take paternity leave (rather than notice had to be given 15 weeks before the EWC)
- Apply where the EWC is on or after 6 April 2024.

Extension to pregnancy and family protections in relation to redundancy

Protection from Redundancy (Pregnancy and Family Leave) Act 2023


- Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024 ('the MASPA Regulations') introduce additional redundancy protections with effect from 6 April 2024
- Extends redundancy protection for those on maternity and other family-related leave.
- Expands the entitlement to be offered suitable alternative employment where a vacancy exists from notification of the pregnancy for a period up to 18 months after birth or adoption.

Extension to pregnancy and family protections in relation to redundancy

| Who | Protection Period: |
|---|--|
| Pregnant employee taken maternity leave | <p>From: When employer notified of pregnancy</p> <p>To: 18 months from child's date of birth or Expected week of Childbirth (includes any time spent on maternity leave or other statutory leave)</p> |
| Employee who has suffered a miscarriage | <p>From: When employer notified of pregnancy</p> <p>To: Two weeks after the end of the pregnancy, for pregnancies ending before 24 weeks.</p> |
| Employee taking adoption leave | <p>From: Beginning of adoption leave</p> <p>To: 18 months from date of placement or date of entry into Great Britain</p> |
| Employee taking Shared Parental Leave | <p>From: Beginning of Shared Parental Leave</p> <p>To: If less than 6 weeks of SPL is taken, at the end of SPL. If more than 6 continuous weeks taken, 18 months from child's date of birth/placement.</p> |

Neonatal Care (Leave and Pay) Act 2023

- The Neonatal Care (Leave and Pay) Act was passed in May 2023 and is expected to come into force around April 2025.
- It will provide up to 12 week's paid leave for parents of babies that need neonatal care.
- These rights are available to parents of babies who are admitted to hospital up to the age of 28 days and who are in hospital for seven full days or more.



Holiday pay and entitlement reforms from 1 January 2024

Holiday pay and entitlement reforms

- The Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023 came into effect on 1 January 2024 to amend the WTR 1998.
- It sets out a new system of holiday accrual for irregular hours and part-year workers.
- The measures derived from two separate consultations:
 - Calculating holiday entitlement for part-year and irregular hours worked, published 12 January 2023.
 - Retained EU Employment Law, published 10 May 2023.
- The government has published guidance on the new holiday provisions.

Holiday pay and entitlement reforms

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

When do they apply?

- New provision on pay and carry forward of leave came into force on **1 January 2024**.
- Changes that apply to part year and irregular workers come into force from **1 April 2024** at the earliest, and for many, far later.
- Rolled up holiday pay option applies to leave years starting on or after **1 April 2024**.

Holiday pay and entitlement reforms

Leave Years and the new rules:

- 1 April – 31 March leave year – new rules apply from 1 April 2024
- 1 January to 31 December leave year – new rules apply from 1 January 2025
- 31 March – 30 March leave year – new rules apply from 30 March 2025

Holiday pay and entitlement reforms

ER Regulations 2023 includes:

- Defines “irregular- hours worker” and “part- year worker”.
- Regulation 15F:
- An **irregular hours worker**: *if the number of paid hours that they will work in each pay period during the term of their contract in that year is, under the terms of their contract, wholly or mostly variable;*
- A **part-year worker**: *if, under the terms of their contract, they are required to work only part of that year and there are periods within that year (during the term of the contract) of at least a week which they are not required to work and for which they are not paid.*

Holiday pay and entitlement reforms

ER Regulations 2023 includes:

- For leave years starting on or after 1 April 2024, these workers' holiday entitlements will no longer be governed by regulations 13 and 13A of the WTR 1998 (i.e. 5.6 weeks) but will instead derive from new regulation 15B.
- Regulation 15B creates a new holiday entitlement calculated in hours, not weeks
- Accrues at a rate of 12.07% of the hours they actually work during the pay period, capped at 28 days.
- Impact = lower entitlement and pay, reducing impact of *Harpur Trust* decision

Holiday pay and entitlement reforms

ER Regulations 2023 includes:

- Employers will be able to choose from two systems of holiday pay for regulation 15B holiday.
- Regulation 16A - Rolled up holiday pay for irregular hours workers and part-year workers
- Apply an uplift of 12.07% to a worker's remuneration for work done in each pay period
- Must be itemised separately on payslips
- Workers must still be allowed to take their holiday entitlement

Holiday pay and entitlement reforms

ER Regulations 2023 includes:

- Defines week's pay for holiday pay purposes. A week's pay for holiday under regulation 13 now includes:
 - Payments, including commission payments, intrinsically linked to the performance of tasks which a worker is obliged under their contract 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 date.

Holiday pay and entitlement reforms

Carry Over:

- Carry over of leave now a statutory right when worker is unable to take leave as a result of:
 - taking a period of statutory leave
 - taking a period of sick leave, or
 - where an employer fails to:
 - recognise a worker's right to annual leave or paid annual leave;
 - give the worker a reasonable opportunity to take the leave or encourage them to do so, or
 - inform the worker that any leave not taken by the end of the leave year, which cannot be carried forward, will be lost.

Carry Over

| Entitlements it applies to | Cause of carry over | Duration of Carry over |
|--|---------------------|---|
| Reg 13 (4 weeks) and 13A (1.6 weeks) and 15B (rolled up holiday pay) | Statutory Leave | Following leave year |
| Reg 13 and 15B Not 13A | Sick Leave | 18 months from the end of the leave year in which the entitlement arose |
| Reg 13 and 15B Not 13A | Failure to permit | Indefinitely until rectified. Then not beyond end of the first full leave year in which the failure did not apply. |
| Reg 13 and 15B Not 13A | Failure to promote | Indefinitely until rectified. Then not beyond end of the first full leave year in which the failure did not apply. |

Holiday pay and entitlement reforms

What next?

1. Identify which workers are “irregular hours” or “part-year workers” . Do the rules apply?
2. Decide if you will be paying rolled up holiday pay to those workers
3. Ensure approach you are using applies the 12.07% uplift to regular overtime payments, and any payments for professional or personal status, not just basic pay
4. Ensure workplace arrangements are ready to administer new systems of accrual and pay
5. Review existing contracts and holiday policies



Worker Protection
(Amendment of Equality
Act 2010) Act 2023

Worker Protection (Amendment of Equality Act 2010) Act 2023

What is it?

- The Act amends the Equality Act 2010 (EqA 2010) to:
 - Introduce a duty on employers to take reasonable steps to prevent sexual harassment of their employees.
 - Give employment tribunals the power to uplift sexual harassment compensation by up to 25% where an employer is found to have breached the new duty to prevent sexual harassment.
- Received Royal Assent on 26 October 2023.

Worker Protection (Amendment of Equality Act 2010) Act 2023

What does it do?

- An employer (A) must take **reasonable steps** to prevent sexual harassment of employees of A in the course of their employment.
- Sexual harassment in the course of their employment.
- The Equality and Human Rights Commission's guidance on sexual harassment and harassment at work contains steps employers should consider taking to prevent and deal with harassment at work



Managing Stress at Work ACAS Guidance

Managing Stress at Work

Background

- Stress is defined by the Health and Safety Executive (HSE) as:
“the adverse reaction people have to excessive pressures or other types of demand placed on them.”
- 33% of British workers believe that their organisation is not effective at managing work-related stress.
- 3 out of 5 employees felt stressed due to the rising cost of living.
- Organisations benefit from creating positive work environments which can also help reduce stress.

Managing Stress at Work

Background

Education Support survey in 2023 found that wellbeing in the sector is poor and continues to decline.

- 78% of all education staff are stressed (3% increase on 2022)
- 78% of schoolteachers are stressed (6% increase on 2022 and the highest of all job roles)
- 36% of schoolteachers reported experiencing burn-out (9% increase on 2022)
- 51% of staff experience insomnia or difficulty sleeping (6% increase on 2022)

Managing Stress at Work

Causes

- Too many or conflicting demands.
- Poor working conditions.
- Little control over how and when work is done or decision making.
- Lack of support or encouragement from managers and others at work.
- Bullying and conflict at work, particularly if these are not managed well.
- Not having enough training or skills to do a job.
- Feeling unclear about roles and responsibilities.
- Low trust and not feeling able to speak up about concerns.
- Change within the organisation.
- Personal circumstances

Managing Stress at Work

Signs of Stress

- Employees should look after their own health and wellbeing.
- Senior Leaders can also look out for any signs and start a conversation
 - Poor concentration
 - Finding it hard to make decisions
 - Being irritable or short tempered
 - Tearfulness
 - Tiredness
 - Low mood
 - Avoiding social events

Managing Stress at Work

Relevant Employment Law

- Health and Safety at Work Act 1974
 - This puts a duty of care on employers to protect their employees from the risk of stress at work
- Management of Health and Safety at Work Regulations 1999
 - This requires all employers to make a 'suitable and sufficient assessment' of the risks to the health and safety of their employees are work
- Working Time Regulations 1998
 - This places a duty of care on employers to ensure that employees are not working long hours without regular breaks

Managing Stress at Work

Risk Assessments

- By law, employers must carry out a risk assessment to protect their employees from stress at work.
- Risk Assessments should
 - Identify the risks of stress
 - Decide how to remove or reduce the risks
 - Agree what steps to take
 - Specify a review date

Managing Stress at Work

Supporting Staff

- Talking to your staff
 - Make time
 - Open mind
 - Open questions
 - Listen
 - Identify the cause
 - Work together
 - Sign post to internal and/external specialists
- Assistance for employers to support their staff can be found on the government website
 - [Support with employee health and disability – GOV.UK](https://www.gov.uk)
[\(dwp.gov.uk\)](https://www.dwp.gov.uk)



Mobile phone guidance for schools

Mobile phone guidance for schools

- The Department of Education (DfE) has recently issued guidance on 19 February 2024 on the use of mobile phones in schools.
- The report highlights the following statistics:
 - one in three secondary school pupils report that mobile phones are used in most lessons without permission;
 - one in five pupils have experienced bullying online; and
 - three in ten pupils cite making and maintaining friendships and their mental health as a cause of worry, anxiety or depression

Mobile phone guidance for schools

- The guidance accepts that there is currently a large variation in how different schools manage the use of mobile phones.
- Sets out how schools can implement a policy to prohibit mobile phones from school throughout the school day.
- All teachers and members of staff within the school must enforce the rules.



Recent case decisions

Unfair dismissal – ET Decision

S Malabver-Goulburne v Arbor Academy Trust [2024]

- Headteacher was dismissed following an allegation of gross misconduct namely assaulting a child.
- Tribunal found was outside the range of reasonable responses.
- Importance of reasonableness, when considering whether a dismissal is legally fair.
- This case highlights the sensitivity required when addressing disciplinary matters within the education sector.
- Demonstrates potential repercussions of failing to adhere to the principles of fairness and reasonableness in employment decisions.

Religion or Belief Discrimination – ET Decision

Lister v New College Swindon [2024]

- Claimant was a teacher at the Respondent FE college, holding gender critical beliefs.
- Respondent accepted his belief was a protected philosophical belief under the Equality Act 2010.
- Claimant failed to use a student's preferred pronouns and engaged in other behaviours towards the student resulting in a complaint.
- Claimant dismissed for gross misconduct following a disciplinary investigation. Brought claims for unfair dismissal and discrimination on the grounds of religion or belief.
- ET dismissed the claims.

Discrimination – ET Decision

Papashvili v Governing Body of A School and Others[2024]

- The Claimant teaching assistant brought various claims against his employer, including for sexual harassment after he accused the Headteacher of making inappropriate comments about his body
- The Tribunal upheld 7 of the 18 allegations of harassment, although noted them to be on the “modest side of the scale”.
- Tribunal commented that such remarks made by a senior man are unacceptable and those made by a female headteacher towards a younger teaching assistant should be “similarly unacceptable”.

Disability Discrimination – EAT Decision

Miller v Rentokil [2024]

- The Issue – **Did an employer make reasonable adjustments when it dismissed a disabled employee rather than placing him in an alternative role on a trial basis?**
- Summary:
 - The Claimant was unable to work in his role after being diagnosed with multiple sclerosis.
 - The Respondent looked at other jobs for him, and he applied for an administrative role. He was unsuccessful at interview and was dismissed.

Disability Discrimination – EAT Decision

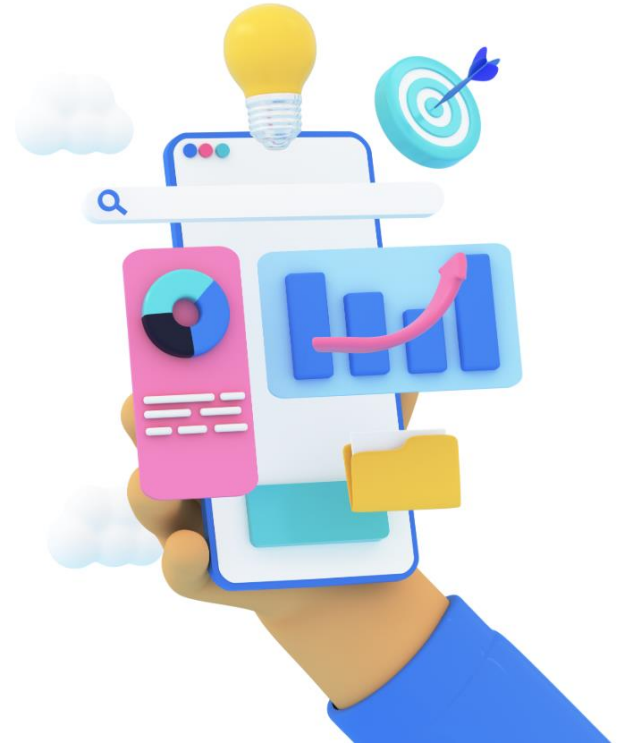
Miller v Rentokil [2024]

- He claimed failure to place him in administrative role on a trial basis was a failure to make reasonable adjustments under the Equality Act 2010.
- The ET and EAT upheld his claims.
- The Claimant was placed at a substantial disadvantage because of his disability. Moving to an alternative role would have removed that disadvantage.
- Respondent unable to show it was not reasonable to have put him in that role.

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