

BDBF'S EMPLOYMENT LAW TRACKER FOR 2023 AND BEYOND

Our tracker highlights new domestic legislation and other key proposals for legislative reform.

	AREA	WHAT'S THE CHANGE?	STATUS?
1.	EU-derived employment law	<p>Certain retained EU laws to expire on 31 December 2023</p> <p>The Retained EU Law (Revocation and Reform) Act 2023 provides that around 600 pieces of retained EU law (either contained in statutory instruments or retained directly applicable EU law) will automatically expire on 31 December 2023. The Government's list of retained EU laws to be revoked contains the following employment laws:</p> <ul style="list-style-type: none"> • 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. <p>Other pieces of retained EU law will stay on the statute books but may be revoked or reformed at a later date. The Government has already opened consultations on proposed reforms to the Working Time Regulations 1998 (WTR) and the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). These consultations are discussed at sections 12 and 13 below.</p> <p>Any retained EU law which is kept will be “assimilated” into UK law. In practice this means that certain EU law principles that govern how these rights operate will disappear. On top of this, the continued impact of EU law on UK law will be downgraded, for example, by making it easier for the courts and tribunals to</p>	<p>The Retained EU Law (Revocation and Reform) Act 2023 received Royal Assent on 29 June 2023.</p>

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		<p>depart from previous EU case law decisions.</p> <p>You can read more about the proposals in our briefing here.</p>	
2.	<p>Caring responsibilities</p>	<p>New right to leave for those with caring responsibilities</p> <p>The Carer's Leave Act 2023 provides for the introduction of new rights and protections for carers including:</p> <ul style="list-style-type: none"> • a Day 1 right for employees to take at least one week's unpaid carer's leave in any 12-month period to provide care for, or make arrangements to provide care for, a dependant who has a long-term care need; • a right to benefit from the existing terms and conditions of employment that would have applied but for the leave (apart from terms and conditions about remuneration); • a right to return to work to a job of a kind to be prescribed by the regulations; • a right to claim compensation from employers who unreasonably postpone, attempt to prevent or prevent the taking of carer's leave; and • protection from detriment or dismissal as a result of having taken carer's leave. <p>This new leave will supplement other forms of leave such as unpaid parental leave or unpaid time off for dependant emergencies.</p> <p>You can read more about the new rights in our briefing here.</p>	<p>The Carer's Leave Act 2023 received Royal Assent on 24 May 2023.</p> <p>The scope and mechanics of the new rights will be set out in secondary legislation. The Government has said that regulations will be laid in due course, although it is expected that this will not be before April 2024.</p>

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3.	Redundancy	<p>New rules offering greater protection in redundancy processes during pregnancy and after return from maternity and other forms of family leave</p> <p>The Redundancy (Pregnancy and Family Leave) Act 2023 provides for regulations to be made which would give:</p> <ul style="list-style-type: none"> • pregnant employees who are at risk of redundancy priority for any suitable alternative vacancy that is available from the point that they notify the employer of their pregnancy; • employees returning from maternity, adoption or shared parental leave who are at risk of redundancy priority for any suitable alternative vacancy that is available following their return to work. It is anticipated that returners from maternity or adoption leave will be protected for six months after their return to work, but that the protected period may be different for shared parental leave given that it may be taken in discontinuous blocks; and • employees the right to claim automatic unfair dismissal where an employer fails to comply with its obligations regarding offering suitable alternative vacancies and the employee is dismissed as a result. <p>You can read more about the new rights in our briefing here.</p>	<p>The Redundancy (Pregnancy and Family Leave) Act 2023 received Royal Assent on 24 May 2023 and is due to come into force on 24 July 2023.</p> <p>The scope and mechanics of the new rights will be set out in secondary legislation. The Government has said that regulations will be laid in due course.</p>
4.	Neonatal leave and pay	<p>New rights to neonatal leave and pay</p> <p>The Neonatal Care (Leave and Pay) Act 2023 provides for the introduction of rights and protections for employees who are parents of babies up to 28 days old who require neonatal care for at least one week without interruption. The rights and protections include:</p>	<p>The Neonatal Care (Leave and Pay) Act 2023 received Royal Assent on 24 May 2023.</p> <p>The scope and mechanics of the new rights will be set out in seven pieces of secondary legislation. The</p>

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		<ul style="list-style-type: none"> • a Day 1 right for employees to take leave where they are the parent of a baby who needs to spend at least one week in neonatal care; • a right for employees with at least 26 weeks' continuous service and whose weekly earnings are at or above the "lower earnings limit" (currently £123 per week) to be paid statutory neonatal pay; • a right to benefit from the existing terms and conditions of employment that would have applied but for the leave (apart from terms and conditions about remuneration); • a right to return to work to a job of a kind to be prescribed by the regulations; and • protection from detriment or dismissal as a result of having taken or sought to take neonatal leave. <p>You can read more about the new rights in our briefing here.</p>	<p>Government has said that the regulations will be laid in due course but has indicated that the rights are expected to come into force in April 2025.</p>
5.	Pay for hospitality workers	<p>Tips, gratuities and service charges to be paid to workers in full</p> <p>The Employment (Allocation of Tips) Act 2023 will:</p> <ul style="list-style-type: none"> • require employers to ensure that all tips, gratuities and service charges that it receives, or exercises control over, are paid to workers in full without deductions by the end of the following month (this would not cover tips paid directly to workers in cash, where those tips are kept by them); • introduce obligations to ensure the fairness of arrangements to distribute tips among workers, either by the employer or an independent tronc arrangement; • require employers to have a written policy on how tips are dealt with in their business; and 	<p>The Employment (Allocation of Tips) Act 2023 received Royal Assent on 2 May 2023.</p> <p>However, the reforms will not be introduced immediately. The Government has indicated that the changes will come into effect not earlier than one year after Royal Assent (i.e. not before 2 May 2024).</p> <p>The Code of Practice is expected to be published by the end of 2023.</p>

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		<ul style="list-style-type: none"> • give workers the right to bring claims against employers who fail to comply with the new rules. <p>In addition, a new Code of Practice on Tipping will be published and will provide guidance on how tips should be distributed.</p> <p>You can read more about the proposals in our briefing here.</p>	
6.	Flexible working	<p>Reform of the flexible working request framework</p> <p>The Government has backed a Private Members' Bill that is intended to expand and improve the flexible working framework. The Employment Relations (Flexible Working) Bill will amend the Employment Rights Act 1996 to:</p> <ul style="list-style-type: none"> • remove the requirement for employees to explain in their request what effect they think it will have on their employer; • allow employees to make two flexible working requests per year rather than one; • require employers to consult with the employee before refusing a request; and • reduce the deadline for an employer's decision on a flexible working request from three months to two months. <p>In addition, in December 2022, the Government responded to an earlier consultation on flexible working reform. In the response, the Government confirmed that it would continue to support the Bill as it progresses through Parliament and that it would also make the right to request flexible working a Day 1 employment right.</p>	<p>The Employment Relations (Flexible Working) Bill passed its third reading in the House of Lords on 14 July 2023. Therefore, the Bill is awaiting Royal Assent and will then become law. However, the Bill provides that the changes may come into force on a date or dates specified by the Secretary of State. It is not yet clear when the changes will come into force.</p> <p>The Government has said that secondary legislation will be introduced to make the right to request flexible working a Day 1 employment right. It is not yet know when this will be laid before Parliament.</p>

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		<p>Separately, on 12 July 2023, Acas launched a consultation on proposals to update its statutory code of practice on handling flexible working requests.</p> <p>You can read more about the proposals in our briefing here.</p>	
7.	Discrimination and harassment	<p>New rules on sexual harassment at work</p> <p>The Government has backed a Private Members' Bill that is intended to implement the Government's earlier commitments to enhance the law on harassment at work. The Worker Protection (Amendment of Equality Act 2010) Bill will:</p> <ul style="list-style-type: none"> • impose a legal duty on employers to take proactive steps to prevent sexual harassment in the workplace; and • make employers liable for third party harassment of their workers in certain circumstances. <p>You can read more about the proposals in our briefing here.</p>	<p>The Worker Protection (Amendment of Equality Act 2010) Bill is at the Committee Stage in the House of Lords, meaning that it is near the end of its passage through Parliament.</p> <p>The Bill states that its provisions will come into force one year from the day on which the Act is passed, meaning that the changes are unlikely to come into force until the second half of 2024.</p>
8.	Industrial action	<p>Minimum service levels for strikes in relevant services</p> <p>The Strikes (Minimum Service Levels) Bill would allow the Secretary of State to make "minimum service" regulations for strikes in the fields of health, transport, education, fire and rescue, border control and nuclear decommissioning and radioactive waste management services.</p> <p>The Bill proposes that where a union calls a strike to which minimum service regulations apply, the employer would be able to give the union a notice identifying the workers that are required to work and what they are required to</p>	<p>The Strikes (Minimum Service Levels) Bill is nearing the end of its passage through Parliament.</p> <p>The specific minimum service levels for particular sectors will be set out in secondary legislation, to be laid after the Bill becomes an Act.</p>

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		do during the strike. Any such identified worker who went on to take part in the strike action, to an extent not permitted under the notice, would lose their automatic protection from dismissal.	
9.	Employment contracts	<p>Workers to be given the right to request more predictable working patterns</p> <p>The Government has backed a Private Members' Bill that would give workers and agency workers a statutory right to request a more "predictable" working pattern. The Workers (Predictable Terms and Conditions) Bill will allow qualifying workers and agency workers to make a request for a more predictable working pattern where:</p> <ul style="list-style-type: none"> • their work pattern lacks predictability; • the change requested relates to their working pattern; and • the purpose of the request is to achieve a more predictable working pattern. <p>Up to two applications may be made in a 12-month period, although these may not be made concurrently. It is worth noting that this extends to requests made under the separate flexible working regime, where the flexible working request is for a change that would have the effect of delivering a more predictable contract.</p> <p>You can read more about the proposals in our briefing here.</p>	<p>The Workers (Predictable Terms and Conditions) Bill is awaiting its third reading in the House of Lords, meaning that it has almost completed its passage through Parliament.</p> <p>After the Bill has passed, secondary legislation will be drafted and laid before Parliament. The changes are unlikely to come into force until 2024.</p>
10.	Paternity leave	<p>Reform of paternity leave framework</p> <p>In a response to a 2019 consultation paper, the Government has committed to make the following changes to the paternity leave framework:</p>	<p>The Government has said secondary legislation will be needed to effect these changes and will be introduced in due course.</p>

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		<ul style="list-style-type: none"> • eligible employees will be able to take the two weeks' statutory paternity leave in two separate blocks of one week of leave (currently, only one week or a single block of two weeks may be taken); • eligible employees will be able to take their statutory paternity leave within 52 weeks of birth or placement for adoption (currently, it must be taken in the first eight weeks after birth or placement for adoption); and • the notice requirements will be changed to make them more proportionate to the amount of time the father or partner plans to take off work. It is proposed that fathers will need to give 28 days' notice before each period of leave they intend to take, although the notice of entitlement will still need to be given 15 weeks before birth. <p>You can read the response document which sets out these proposals here.</p>	
11.	Menopause	<p>Reforms to assist menopausal workers</p> <p>The House of Commons Women and Equalities Select Committee published a report on the impact of menopause in the workplace and recommended that the Government should:</p> <ul style="list-style-type: none"> • appoint a “Menopause Ambassador” to lead the way in showcasing good practice to business; • produce model menopause policies; • introduce Day 1 right to request flexible working; • require a large public sector employer to trial specific “menopause leave”; • publish new guidance on the law; 	<p>The Government has said it will bring in the Day 1 right to request flexible working by way of secondary legislation, to be introduced when Parliamentary time allows.</p> <p>Helen Tomlinson was appointed as the first Menopause Employment Champion in March 2023.</p> <p>The new HSE guidance is due to be published later this year.</p>

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		<ul style="list-style-type: none"> • commence the dormant dual discrimination provisions in section 14 of the Equality Act 2010; and • consult on making menopause the tenth protected characteristic in the Equality Act 2010. <p>The Government published its response on 24 January 2023, confirming:</p> <ul style="list-style-type: none"> • it would appoint a “Menopause Employment Champion” (rather than a “Menopause Ambassador”); • that new HSE guidance on disability and illness could cover menopause; • it would introduce a Day 1 right to request flexible working (this is an existing commitment – see above); and • that it rejected all of the other recommendations. <p>You can read more about the Government’s response in our briefing here</p>	
12.	TUPE	<p>Consultation on reform of informing and consulting requirements under TUPE</p> <p>On 12 May 2023, the Government published a consultation paper, setting out its plans regarding the future of retained EU employment law. This included proposals to reform informing and consulting obligations under TUPE. Currently, before such a transfer, the outgoing employer must inform and consult with representatives of the affected employees. These can be existing representatives (e.g. trade union representatives) or ones that are elected just for this purpose. However, outgoing employers with up to nine employees may inform and consult with affected employees directly if there are no existing representatives in place.</p> <p>The consultation proposes that the option of consulting with affected</p>	The consultation closed on 7 July 2023. The Government’s response is awaited.

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		<p>employees directly should be extended to businesses:</p> <ul style="list-style-type: none"> • with up to 49 employees; and • with any number of employees where a transfer of up to nine employees is proposed. <p>However, this option would only be available where there were no existing representatives.</p> <p>You can read more about the Government's proposals in our briefing here.</p>	
13.	Working time and holidays	<p>Consultation on reform of the Working Time Regulations 1998</p> <p>On 12 May 2023, the Government published a consultation paper, setting out its plans regarding the future of retained EU employment law. This included proposals to reform the Working Time Regulations 1998 to:</p> <ul style="list-style-type: none"> • clarify that employers do not need to record the daily working time of workers; • create a single annual leave entitlement of 5.6 weeks (rather than 4 weeks' EU-derived leave and 1.6 weeks' domestic leave as is currently the case); and • introduce the ability to pay rolled-up holiday pay for all employers. <p>You can read more about the Government's proposals in our briefing here.</p>	The consultation closed on 7 July 2023. The Government's response is awaited.
14.	Holidays for atypical workers	<p>Consultation on holiday entitlement for part-year and irregular hours workers</p> <p>On 12 January 2023, the Government opened a consultation on proposals to</p>	The consultation closed on 9 March 2023. The Government's response is awaited.

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		<p>make holiday entitlement proportionate to hours worked. This consultation follows the Supreme Court's decision in the case of <u>Harpur Trust v Brazel</u>, where it was decided that part-year workers on permanent contracts were entitled to 5.6 weeks' holiday per year and this could not be pro-rated to reflect non-working periods. You can read more about the Supreme Court's decision here.</p> <p>The consultation also proposes introducing a 52-week holiday entitlement reference period for part-year workers and workers with irregular hours, based on the proportion of time spent working over the previous 52-week period. Holiday entitlement would be calculated in hours at the start of the leave year as 12.07% of the hours worked in the 52 weeks.</p> <p>You can read the consultation here.</p>	
15.	Employee competition	<p>Non-compete restrictions in employment and worker contracts to be limited to three months</p> <p>On 10 May 2023, the Government announced plans to reform the use of non-compete clauses in employment and worker contracts. Legislation will be introduced which will limit such restrictions to three months. Other types of post-termination restrictions will not be affected.</p> <p>You can read more about the proposals in our briefings here and here.</p>	It is not yet known whether the Government intends to consult over these proposals. It has said that legislation will be introduced when Parliamentary time allows.
16.	Whistleblowing	<p>Review of UK whistleblowing framework</p> <p>On 27 March 2023, the Government announced the launch of a review of the current UK whistleblowing legal framework. The terms of reference of the</p>	The review is expected to conclude by Autumn 2023. It will then take several months to consider the findings and decide upon next steps.

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		<p>review state that it will look at the following core questions:</p> <ul style="list-style-type: none"> • How the whistleblowing framework facilitates disclosures. • How the whistleblowing framework protects workers (and the review will also consider the definition of “worker” for whistleblowing purposes). • Whether information about whistleblowing is available and accessible to workers, employers, prescribed persons and others. • What have been the wider benefits and impacts of the whistleblowing framework on employers, prescribed persons and others. • What best practice looks like in terms of responding to disclosures. <p>You can read more about the review in our briefing here.</p>	
17.	Financial services – bonus cap	<p>Consultation on the removal of the cap on bankers’ bonuses</p> <p>On 19 December 2023, the PRA and FCA published a joint consultation paper seeking views on proposals to remove the existing limits on the bonus cap operating in the financial services sector. The cap limits variable pay for “material risk takers” (i.e. staff whose activities potentially expose the firm to risk) to 100% of their fixed pay (or 200% where there is shareholder approval). Under the proposals, firms will still be required to set an appropriate ratio between fixed and variable pay for key individuals.</p> <p>You can read the consultation here.</p>	<p>The consultation closes on 31 March 2023. The response is awaited.</p> <p>If taken forward, the changes will take effect for firms on the first performance year starting after publication of the joint policy statement, which is likely to mean the 2024/25 performance year.</p>
18.	Financial services - regulation	<p>Review of the Senior Managers and Certification Regime</p> <p>On 30 March 2023, the Financial Conduct Authority (FCA) and UK Prudential</p>	<p>The review closed on 1 June 2023. The response is awaited.</p>

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		<p>Regulation Authority (PRA) published a joint discussion paper on the review of the Senior Managers and Certification Regime (SM&CR), inviting responses by 1 June 2023.</p> <p>The FCA and PRA are seeking views on the effectiveness, scope and proportionality of the SM&CR, and potential improvements to the regime. Of particular interest is how the regime is operating in practice.</p> <p>You can read the review here. You can read BDBF's response to the review here.</p>	
19.	Termination	<p>Consultation on new statutory code of practice on fire and rehire practices</p> <p>In March 2022, in the wake of the mass redundancies announced by P&O Ferries, the Government promised to publish a statutory code of practice which would detail how businesses should hold fair, transparent and meaningful consultations on proposed changes to employment terms and would include practical steps to follow.</p> <p>On 24 January 2023, the Government published the draft "Statutory Code of Practice on Dismissal and Re-engagement" and launched a consultation seeking views on the draft code. As a statutory code, the Tribunals and Courts would be required to take it into account when considering relevant cases, including unfair dismissal, and would have the power to apply an uplift of up to 25% to an employee's compensation where the code applied, and the employer had unreasonably failed to follow it.</p> <p>You can read the consultation and draft code here.</p>	The consultation closed on 18 April 2023. The Government's response is awaited.

BDBF is a leading employment law firm based at Bank in the City of London. If you would like further information, or to discuss how to prepare for any of these changes, please contact Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

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