

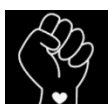


Sexual harassment - Worker Protection (amendment of Equality Act 2010)

There is now a proactive duty to take reasonable steps to prevent sexual harassment in the workplace.

An employer will be vicariously responsible for third party acts such as those by customers or clients even if it does not have control over them.

A tribunal can make a 25% uplift in awards if the employer has not taken reasonable action to mitigate this.



Offensive comments made privately (Webb v London Underground)

Mrs W was dismissed for posting offensive comments about George Floyd and Black Lives Matter on private Facebook messages.

The Employment Tribunal (ET) held that Article 10 of the European Convention on Human Rights which gives a right to freedom of expression had to be balanced against protecting the rights of others. In this case, the employer was justified in relying on these private messages to protect other employees and also to protect its reputation.



Annual Tribunal limits increase from 6th April 2023

The Compensatory Award increases to £105,707 (from £93,878).

A week's pay for basic award and redundancy is now £643.



Vento guidelines increased

The amount of compensation for injury to feelings has been increased as follows:

£1,100-11,200 for lowest band (less serious cases).

£11,200-£33700 - cases that are in the middle range of seriousness.

£33700-£56,200- the most serious cases.



Disability

An individual had various neurological conditions. He also had a short temper and didn't like being told what to do. The evidence was that this was not due to his disability.

A tribunal ruled that any disciplinary action because of his other behaviours was not a detriment due to his disability.

For section 15 claims (unfavourable treatment arising from a disability) the correct approach is to answer the following questions:

- (i) What are the individual's disabilities?
- (ii) What are the effects of the disability?
- (iii) What unfavourable treatment is alleged?
- (iv) Was that unfavourable treatment due to the disability?



Redundancy neurodiversity

An Employee with dyslexia had 22 years of service with a retailer. He was making errors in his work, was not completing work on time and was struggling to balance work due to dyslexia. He was made redundant.

The Employer failed to discount the effects of his disability, did not accept what the employee said and did not seek an expert report.

The Employee was awarded £50,000 by the Tribunal.



Ethnicity pay guidance

The Government has published guidance for employers on how to measure, report on, and address any ethnicity pay differences within their workforce.

We suspect in due course this will become mandatory.



Failure to prevent fraud offence



The Government is creating a new failure to prevent fraud offence for large organisations and this can also apply to incorporated public bodies.

Audit/HR need to ask whether their organisation has reasonable fraud prevention measures in place.



Protection from Redundancy
(Pregnancy and Family Leave) Act 2023

Protection from Redundancy Act 2023

The new Act extends redundancy protection to cover any period of pregnancy and a period of time following an employee return from maternity/adoption/shared parental leave.

This means that there is now an obligation to offer employment where there is a suitable vacancy.

It is expected that this will be apply to the period of 6 months following a return. Further regulations are due to be published.



Neonatal Care (Leave and Pay) Act 2023

There is a new right for neonatal care leave and pay, which will come into force in April 2025 will be available to employees from their first day of employment. Neonatal pay will only be paid to those employees who have 26 weeks' continuous service.

Parents may have up to 12 weeks' leave and a minimum of one week for parents whose children have needed hospital treatment for neonatal care.

Regulations will provide the detail, but it is expected that, to qualify, the baby would have been in medical care for 7 days in the first 28 days of its life.

Care leave can be taken within 68 weeks of the baby's birth.

There will be no requirement for employees to explain what impact the change would have on an employer's business.



Whistleblowing

The Government has launched a review into the effectiveness of the whistleblowing framework. The evidence gathering stage will take place in the Autumn. The review will look at who is protected, the availability of information and guidance for whistleblowing purposes and how

employers/prescribed persons respond to whistleblowing disclosures.



Discrimination 'tainted information'

In this case, the employee FG had a meeting with the MD and her line manager C to discuss work performance. 1 week later she told C she was pregnant.

A second meeting took place 2 days later where further performance concerns were raised but some improvement was noted.

FG was off sick with morning sickness for 2 days. Meanwhile C told B that certain documents had not been uploaded and that FG had misled him. C also said to FG "is it a virus/contagious - how much time are you going to need for this."

C's discussion with B was misleading because the work would have been done but for this absence and indeed was done soon after FG's return.

FG at a 3rd meeting was dismissed by B. The ET held that this was pregnancy discrimination.

The Employment Appeals Tribunal upheld an appeal by the employer and stated that the person who carried out the alleged discriminatory act (in this case the dismissal by B) must have been motivated either consciously or sub-consciously by the relevant protected characteristic. It wasn't enough to prove discrimination through C's motivation. What matters was whether B (the decision maker) felt this way.



Increased leave – Family friendly rights

The Carer's Leave Act 2023 provides a right to employees who are unpaid carers to take leave for the purpose of providing/arranging care for a dependant with a long-term care need. Employees will have this right from day one of their employment.

"Long term" has a fairly broad definition as it covers a care issue lasting 3 months or for a disability or for a reason connected with old age.

"Dependant" also includes someone living in the same household or someone who reasonably relies on the employee to provide or arrange care.

There are further regulations to come which will set out the details.



ICO guidance on responding to employee SARs

The ICO has provided guidance on responding to employee SARs (Subject Access Requests).

It is worth noting that:

-an employer can ask the employee to specify what data they want and that the request won't be regarded as excessive simply because it seeks a lot of information

- a settlement agreement cannot override the right to make a SAR and any clause in a settlement that seeks to do this will be unenforceable.

-an employer cannot refuse to comply simply because there is a grievance or tribunal proceedings. An exemption will be needed e.g. disclosing information about other people, confidential references, management information (forecasting e.g. redundancy), negotiations with requester etc.



Non-compete clauses

There is a current Government consultation to limit these to 3 months for employment contracts but not for LLP or shareholder or partnership agreements.



Strikes minimum service levels

As a result of new legislation, unions will have to provide a minimum level of staff when they go on strike. This affects services related to health, education, transport, fire and rescue authorities as well as nuclear and border security. More regulations and a new statutory code are due to be published which will touch on how to assess minimum service levels. At the moment, no date has been set for when this legislation will come into effect.



Conduct of Employment Agency Amendment Regulations 2022

These regulations were introduced last year to enable employers to hire temporary staff to cover for staff who went out on strike. However, this is no longer possible because a recent High Court case has ruled that this was unlawful as the Government hadn't consulted enough before implementing the change. We will keep an eye out for future developments.



Consultation on working time

There is consultation for some minor changes:

- Merging basic and annual leave to have one set of rules with 5.6 weeks
- Allowing 'rolled up' holiday pay
- Reform record keeping requirements



Flexible Working

There are amendments to the flexible working regime following the passing of recent legislation.

An employee can make 2 requests rather than one per year.

There is a need to consult with the employee before rejecting it.

The response must be given within 2 months rather than the current 3.



ACAS guidance on mental health

New guidance has been produced and it has the following recommendations for employers to consider where an employee has mental health issues:

- Removing stressful tasks or deadlines or breaking them into short term tasks.
- Reviewing working relationships and communication styles and agreeing a preferred communication method.
- Provision of homeworking, parking and room dividers.
- Adapting trigger points and providing extended phased returns.
- Additional support should be provided with regular check ins, dedicated mentors, coaching and confidence building sessions.



Occupational Health consultation

The Government has launched a consultation into use of occupational health by employers. This is with a view to introducing a national health at work standard to help provide a baseline for quality OH provision including guidance and various other practice points.

Contact Details

If you have any queries relating to this newsletter or wish to seek employment law advice or discuss training needs, please contact: andrew.brett@norfolk.gov.uk, 01603 223101

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