

Update on Progress of Employment Bills (Lecture B1383 – 20.19 minutes)

A number of employment bills have passed through the House of Commons and need to be debated in the House of Lords before becoming law.

Workers (Predictable Terms and Conditions) Bill

The government gave its backing on 3rd February 2023 to the Workers (Predictable Terms and Conditions) Bill as it passed its second reading and it is now with the House of Lords for 2nd reading 16 June 2023. The new rights under this Bill will apply to workers and employees, including those employed through agency work, who have been engaged for at least 26 weeks.

Under the Bill workers may apply for a change to their terms and conditions to obtain a more predictable working pattern if:

- they have been employed by same employer for a prescribed period yet to be set by regulations, 26 weeks expected;
- their existing work pattern is uncertain in terms of the hours they work;
- the times they work or their fixed term contract period the worker will be able to request a change to their working pattern to make it more predictable;
- their fixed term contract is for less than 12 months they can make a request that it be extended to more than 12 months.

A maximum of 2 applications can be made in a year. The employer must reply to the worker within one month of the application and is able to reject the application on similar basis to flexible working requests. These include – burden of additional costs, detrimental in meeting demands of clients, detrimental effect of recruiting staff, impact of other aspects of business, insufficient work during periods when worker proposes to work and planned structural changes.

Employment Relations (Flexible Working) Bill

This bill is with the House of Lords committee 13 June 2023. It proposes changes to the Employment Rights Act 1996 to make provision in relation to the rights of employees and other workers to request variation to terms and conditions of employment including working hours, times and locations.

An employee may not make more than 2 applications during any 12 months. The employer shall not refuse the application unless the employee has been consulted about the application. Once the application has been made the employer will have 2 months in which to respond whereas currently, they have 3 months.

Miscarriage Leave Bill – amendment of Employment Rights Act 1996

This bill proposes to make provision for not less than 3 days leave for people who have experienced a miscarriage under 24 weeks. This may be paid as statutory bereavement pay to parents.

Pensions (Extension of Automatic Enrolment) No 2 Bill

This bill is with The House of Lords for its 2nd reading. It proposes removing the current lower age limit, of 22 years, for auto enrolment and removing the current lower qualifying earnings limit of £6,240.

Carer's Leave Act 2023 - New Right for Unpaid Leave for Carers

Following the "Carer's Leave Consultation" there was clear support for the introduction of a leave right for unpaid carers. The Carer's leave Act received Royal assent on 24 May 2023 and is expected to come into force in 2024.

Carers leave will be a right, from day one of employment, for unpaid carers to take up to one week, 5 working days, unpaid leave each year to look after the person for whom they care. Employees, where eligible, will be able to take the leave either individual day or half days up to a block of one week. The employee will be required to give notice of the leave the same as for annual leave being twice the length of the leave required plus one day. It is likely the employer will have limited scope for rejecting requests for the leave.

The entitlement to statutory carer's leave will:

- Be available to employees regardless of length of service – so from day one;
- Depend on the carer's relationship with the person being cared for – using the definition of dependant as in right to time off for dependants – spouse, civil partner, child, parent;
- Depend on the person being cared for having a long-term care need – long term illness or injury (mental or physical), a disability as defined by Equality Act 2010 or issues related to old age. There would be limited exemptions from the "long term care" requirement such as re a terminal illness.

Extension of Redundancy Protection for New Parents and Pregnant Employees

The Protection from Redundancy (Pregnancy and Family Leave) Act received Royal Assent on 24 May 2023. The Act will enable redundancy protection to apply to all pregnant women as well as new parents returning to work after leave. It is expected to come into force from 2024.

The "protection period" will be extended to run from the date the employee notifies her employer she is pregnant to 18 months after the birth. This means that a new mother returning to work after a year of maternity leave has a further 6 months redundancy protection. The extended protection will also be available to parents returning from adoption or shared parental leave.

Currently employees on maternity leave who are at risk of redundancy must be offered suitable alternative roles where they exist before making them redundant. This special protection ends when the maternity leave ends or two weeks after pregnancy ends for women not entitled to maternity leave.

Employment (Allocation of Tips) Act 2023

The Employment (Allocation of Tips) Bill is now an Act and law by gaining Royal Assent on 2 May 2023.

The Act imposes unlawfulness for employers to withhold tips from staff and is expected to come into force in 2024.

The legislation will make it illegal for employers to withhold tips from workers. The move is set to help around 2 million people working in one of the 190,000 businesses across the hospitality, leisure and services sectors, where tipping is commonplace and can make up a large part of their income. This will ensure customers know tips are going in full to workers and not businesses, ensuring workers receive a fair day's pay for a fair day's work.

80% of all UK tipping now happens by card, rather than cash going straight into the pockets of staff. Businesses who receive tips by card currently have the choice of whether to keep it or pass it on to workers. These proposals will create consistency for those being tipped by cash or card, while ensuring that businesses who already pass on tips fairly aren't penalised.

The legislation will include:

- a requirement for all employers to pass on tips to workers without any deductions other than PAYE and NIC;
- a Statutory Code of Practice setting out how tips should be distributed to ensure fairness and transparency;
- new rights for workers to make a request for information relating to an employer's tipping record, enabling them to bring forward a credible claim to an employment tribunal.

Under the changes, if an employer breaks the rules, they can be taken to an Employment Tribunal, where employer can be forced to compensate workers, often in addition to fines.

ACAS is drawing up a code of practice for employers.

Neonatal Care (Leave and Pay) Act 2023

The Neonatal Care (Leave and Pay) Act 2023 received Royal assent on 24 May 2023. It is anticipated that it will be effective from 2025 but could be 2024. This Act will allow parents, from day one of employment, to take up to 12 weeks of paid leave in addition to the usual statutory maternity and statutory paternity leave and pay periods. This will be an employment right from day one of employment.

The criteria are:

- the admission to hospital lasts for a continuous period of 7 days or more;
- the baby is neonate - aged 28 days or less.

Gender Pay Gap Reporting and Ethnicity Pay Gap Reporting

Whilst the reporting of the gender pay gap between men and women is compulsory for employers with over 250 employees the reporting of the ethnicity pay gap is currently voluntary.

Gender pay gap - employers with 250 or more employees working in England, Scotland or Wales, on the snapshot date, 31 March for public sector and 5 April for the private and voluntary sector must report their percentage gender pay gap annually within 12 months. For the 2022 reporting the reporting dates were 30 March 2023 and 4 April 2023. The report is published on the employer's

website and GOV.UK website. For the private and voluntary sectors, the report must be accompanied by a written statement confirming their accuracy, signed by a senior person as set out by law.

Employees, workers on full pay at the snapshot date, including part times, apprentices, zero hours and casual workers are included in the calculation. Excluded from the count are partners, directors, agency workers and those on reduced pay.

The calculation is for the mean and median hourly gender pay gap, the mean and median gender pay gap, proportion of females and males receiving bonuses, proportion of females and males in each pay quartile. Employees not identifying as male or female can be excluded.

Pay includes – shift premiums, allowances, piecework pay and pay for leave BUT excludes overtime pay, pay in lieu of notice, redundancy pay and any other termination payments.

Ethnicity gender pay gap - The Department for Business and Trade published a comprehensive guide for employers on ethnicity pay gap reporting which was updated on 26 May 2023. This comprises:

- Introduction and overview;
- Understanding and reporting your data;
- Collecting ethnicity data;
- Preparing your payroll data;
- Making your calculations.

The Labour party say that if they win the next election this will become mandatory for employers.

Contributed by Alexandra Durrant