



EMPLOYMENT LAW UPDATE

ALLIANCE FOR FINANCE

MAY 2023

David Sorensen

Managing Partner | Employment Department

Morrish Solicitors LLP



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ABOUT US

- **Our firm was established in 1882 and we've worked with trade unions and associations for over 70 years**
- **We act for 30 trade unions and associations**
- **We act for people, not companies**



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SERVICES

- **Employment**
- **Personal injury, disease and medical negligence**
- **Dispute resolution – private and commercial**
- **Wills, probate and Lasting Power of Attorney**
- **Residential property**
- **Family law**
- **Professional negligence**
- **Criminal defence, regulatory and road traffic**



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Agenda

- **Legislative changes**
- **Case law update**
- **Social media**
- **AI**



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Recent changes

- ***“Alreet Judge”***: The Lord Chief Justice and the Senior President of Tribunals announced ET judges and EAT judges should be addressed in hearings as “judge” rather than “Sir” or “Madam”
- **ET compensation: inflation here too of 12.6%**
- **Cap on UD basic award/SRP to £19,290**
- **Cap on UD compensatory award to £105,707**
- **Injury to Feelings, lower band to £11,200, middle band to £33,700 etc.**



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Present and future

- **Employment (Allocation of Tips) Act 2023** received Royal Assent in late May
- **Guidance and regulations to be published**
- **Employer required to implement a written policy on fair distribution of tips**



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Present and future

- **‘Smarter Regulation to grow the economy’ government proposal:**
 - **3-month limit on non-competition clauses in contracts of employment**
 - **Designed to stimulate growth — de-restrict those looking to move employer**
 - **To apply to workers and employees**
 - **Not aimed to apply to partnerships, LLPs, self-employed consultants etc.**
 - **Or business sale or shareholder agreements**
 - **Only to apply to non-competition clauses, not to non-solicitation or non-poaching clauses**



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Retained EU Law (Revocation and Reform) Bill 2022-23 (1)

- EU Sunset clause revised meaning that instead of 5,000 EU-derived laws being burned in the ‘bonfire of EU law’ by 31 December 2023, many will remain save for those identified (600 for now) to go or to be changed, including (with consultation to 7 July 2023):
 - **Working Time Regulations 1998:**
 - Merge the current basic and additional annual leave entitlements to create a single annual leave entitlement of 5.6 weeks governed by one set of rules — query paying basic pay only?
 - Introduce rolled-up holiday pay, so that workers receive an additional amount with every payslip to cover their holiday pay, as opposed to receiving holiday pay only when they take annual leave e.g. 12.07%
 - Remove the record-keeping requirements so that businesses do not have to keep a record of daily working hours of their workers (although record keeping obligations in relation to hours worked for National Minimum Wage purposes will remain)



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Retained EU Law (Revocation and Reform) Bill 2022-23 (2)

- **TUPE:**
 - **Allowing small businesses with less than 50 employees to consult directly with employees regarding a TUPE transfer if there are no existing employee representatives in place**
 - **Allowing businesses of any size to consult directly with employees where no existing employee representatives are in place where a TUPE transfer involves less than 10 employees**

We three bills (3)

- In late May 2023:
 - The Neonatal Care (Leave and Pay) Bill 2022-23 became the **Neonatal Care (Leave and Pay) Act 2023**
 - The Protection from Redundancy (Pregnancy and Family Leave) Bill 2022-23 became the **Protection from Redundancy (Pregnancy and Family Leave) Act 2023**
 - The Carer's Leave Bill 2022-2023 became the **Carer's Leave Act 2023**



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Neonatal Care (Leave and Pay) Act 2023

- **An entitlement to up to twelve weeks' neonatal care leave (per parent) in addition to other statutory leave entitlements such as maternity and paternity leave**
- **The leave will be available to employees from their first day of employment and statutory neonatal care pay will be provided for employees with at least 26 weeks' continuous service and who have earnings not less than the lower earnings limit**
- **Suggests it will be at the statutory flat rate (currently £172.48) or, if lower, 90% of average weekly earnings**
- **Not before April 2025...**



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Protection from Redundancy (Pregnancy and Family Leave) Act 2023

- **To extend the protection against redundancy to six months after returning from maternity, adoption or shared parental leave**



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Carer's Leave Act 2023 (1)

- **A day one right for employees**
- **Employees may take one weeks' unpaid leave to care for a spouse, partner, civil partner, child, parent, a person who lives in the same household or a person who reasonably relies on them for care.**
- **In addition, the individual being cared for must have a long-term care need. This will be defined as a long-term physical or mental illness or injury, a disability as defined under the Equality Act 2010, or issues relating to old age, although there will be limited exemptions (for example, in the case of terminal illness)**



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Carer's Leave Act 2023 (2)

- **Carer's leave may be used for providing care or making arrangements for the provision of care for a dependant who requires long-term care. This could include providing care for someone who reasonably depends on the employee for care while their primary unpaid carer is taking respite**
- **Employees will be able to self-certify their eligibility for carer's leave**
- **Carer's leave may be taken flexibly, in either individual days or half days, up to a block of one week (five working days)**
- **Not before April 2024...**



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Other proposals

- The government response to its September 2021 consultation, *Making flexible working the default*, confirming that the right to request flexible working will become a day one right for employees – (one day *ahem...*)
- New all-party parliamentary group on ‘modernising employment’ formed to make UK hiring the “fastest globally” and “boosting economic growth” in 4 areas – speeding up hiring, improving inclusivity, using tech to reduce barriers to hiring and making UK labour market regulation “the smartest globally”, by developing the concept of collective regulation to balance the needs for growth, fair treatment of workers and fair competition



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Strikes (Minimum Service Levels) Bill

- On it rumbles...
- The HL amendments rejected by the House of Commons were as follows:
 - To limit the territorial extent of the Bill to England
 - To require the government to consult with the House of Commons and the House of Lords on minimum service levels
 - To require employers to ensure individuals have received work notices and to ensure that an employee's failure to comply with a work notice would not be regarded as a breach of their employment contract or constitute lawful grounds for dismissal or any other detriment
 - To remove the requirement for trade unions to take reasonable steps to ensure that employees comply with a work notice
- During the debate, Angela Rayner MP confirmed that the Labour Party opposes the Bill in its entirety and will repeal it if they win the next election

Case Law

- **Webb v LUL 3306438/2021:**
 - Social media and unfair dismissal
- **McQueen v General Optical Council [2023] EAT 36:**
 - Discrimination because of something arising from disability



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Artificial Intelligence (AI) (1)

- **Some countries have banned ChatGPT — France, China, Iran, Russia, Syria, North Korea...**
- **Some companies too e.g. Samsung**
- **No overarching law or regulation of AI as yet in the UK**
- **Current protections:**
- **HRA 1888, ERA 1996, EA 2010 and GDPR**
- **UK government consultation on AI regulation closes on 21 June 2023 with regulatory ‘roadmap’ to be published later in 2023**
- **Spring 2024 deadline for UK regulator/regulation roadmap**



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AI (2)

- On 17 May 2023, Labour MP, Mick Whitley, introduced the **Artificial Intelligence (Regulation and Workers' Rights) Private Members' Bill** (PMB) to the House of Commons. If enacted, the PMB would:
 - Establish that “high-risk” AI use should be targeted for further regulation and require the Secretary of State to produce sector-specific guidance on the meaning of high-risk AI, drawing on recommendations from the TUC manifesto.
 - Introduce a statutory duty for employers to meaningfully consult with employees and trade unions before introducing AI into the workplace.
 - Establish a universal and comprehensive right to human review of high-risk decisions made by AI, as well as a right to human contact when high-risk decisions are being made.
 - Establish a right for workers to disconnect from work.



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AI (3)

- Areas of highest impact on workers
- Recruitment: 'cv screening' and job ads
 - E.g. Amazon automated screening abandoned – discrimination/prejudice
- Ops management:
 - Operational staffing e.g. Thorpe Park
 - Assigning work e.g. Uber facial recognition
 - Customer demand
- Performance reviews and monitoring:
 - CCTV + AI analysis of performance and behaviours
- H&S:
 - 19 M&S distribution centres cut accidents by 80% within 10 weeks of adoption



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AI (4)

- **Upsides:**
 - Improved safety
 - Removes repetitive, menial tasks
 - Faster responsiveness to customer demand
- **Downsides:**
 - Morale/pride
 - Less jobs in certain areas
 - Removal of human supervisory/management level may reduce monitoring of AI and de-skill human workforce
 - Cyber and data risks
 - Intellectual Property rights
- A road to travel



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ANY QUESTIONS?

David Sorensen
Managing Partner, Employment Department
Morrish Solicitors LLP
david.sorensen@morrishsolicitors.com
0333 344 9603

info@morrishsolicitors.com
morrishsolicitors.com



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