

THE WORKPLACE IN 2022

Employment Law



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Several proposed employment law changes have taken a back seat during the pandemic. However, it is hoped that we will now get some clarity on these as we continue through 2022.

Health and wellbeing and flexible working are likely to attract more attention now due to the new working arrangements and there continues to be discussions and support for increased reporting requirements for employers on matters such as ethnicity and disability.

Topics covered:

- Employment Bill and Good Work Plan
- Equality Act 2010 changes
- Closing the Ethnicity Pay Gap
- Disability reporting
- Remote working and flexible working
- Wellbeing
- Menopause
- Restrictive covenants

Employment Law in 2022

EMPLOYMENT BILL AND GOOD WORK PLAN

Following the Taylor Review, a raft of proposals was made to change employment law and working practices.

In the Queen's speech pre-pandemic, it was announced that the Government was seeking to introduce an Employment Bill covering many of these changes.

The changes include:

- **The right to request a more predictable contract after 26 weeks of service**, and an **extension to redundancy protection for expectant and new mothers** (i.e. from the point the employee notifies the employer of her pregnancy to 6 months after her return to work),
- Extending the gap needed to **break continuity of service from one week to four**; and
- **Flexible working becoming the default position.**

Unfortunately, the Employment Bill was not mentioned in the Queen's speech in 2021 and Government has stated that it will be looked at 'when parliamentary time allows'.

EQUALITY ACT 2010 CHANGES

In July 2021, the Government published its response to a consultation on how best to tackle sexual harassment in the workplace and indicated that it would seek to introduce a new duty on employers to prevent sexual harassment in the workplace and put in place greater protection against third party harassment.

It also discussed the possibility of extending the timeframe for bringing claims under the Equality Act 2010 for all claims (not just harassment) with the most likely proposal being to increase this from three months to six months.

Separately, in July 2020, recommendations were made to extend the time limit for pregnant women and new parents to bring claims for pregnancy and maternity discrimination from three to six months after dismissal.

A response to these recommendations is awaited from the Government Equalities Office.

CLOSING THE ETHNICITY PAY GAP

The Government has previously consulted on the possibility of introducing mandatory reporting for employers on ethnicity data to help identify and close the ethnicity pay gap.

The Equal Pay (Information and Claims) Bill was introduced into parliament, setting out proposals for mandatory reporting of ethnicity data for larger employers. However, the Bill did not complete its passage through parliament within the parliamentary session.

It remains to be seen what will happen with this. However, there is a lot of support for ethnicity pay gap reporting and so we expect to see more on this topic in 2022.

REPORTING ON DISABILITY

The Government has launched a consultation on potential voluntary and mandatory reporting on disability within the workplace which would include employers reporting on the proportion of employees identifying as disabled.



This consultation closes on **25 March 2022** and a response is due **17 June 2022**.

The Department for Work and Pensions also published its Green Paper at the end of July 2021 setting out proposals for providing greater support to employees with health conditions. This includes looking at employment outcomes and seeking to close the disability employment gap. A White Paper is expected in mid-2022.

REMOTE WORKING

Studies have been showing that during the pandemic when working remotely:

-  Employers were much better at making faster decisions and not so much red tape.
-  More effective meetings to no more than 45 minutes and just under half of every meeting was a waste of time.
-  Accelerated use of technology. Finding relevant information – data, knowledge and resources.
-  There was an open discussion and dialogue with employees allowing them to put forward ideas and become champions.

This data is useful for employers and employees, however employers should avoid using data surveillance that employees are unaware of.

MAKING CLEAR RED LINES

Many organisations say that good management is about empowering people so the employer gives parameters, but the employees make the decisions for example 'work when it suits you but we trust you to come into the office when needed'.

From a legal perspective, it's a legal requirement to have clear rules.

We have seen more enquiries where there has been an agreement of hybrid working but in practice there has been some resistance to coming back to the workplace.

Setting clear guidelines example:

Option 1

We have three set days a week in the office and we expect to do those three days, and we do not expect a constant negotiation on those three days.

Option 2

Sometimes there will be flexibility and sometimes you may be unable to come in on those set days. However, we will be monitoring the times in so notice patterns of behaviour. So that we can understand what is the cause of the problem.

Setting up clear policies so that not everything becomes a debate will help to free up management time.

EMPLOYEE WELLBEING

Wellbeing needs to be a business mandate going forward. Health being seen as integral to work will continue. During the pandemic lines between work and home were so blurred that employees viewed personal problems as also employers' problems.

Two thirds of employers do provide support for mental health. Employers also want financial wellbeing advice – a study showed only 40% were doing anything and it was not comprehensive.

Employers should have a good, detailed wellbeing employee programme in place ie. access to employee assistance programme, GPs, medical services, gyms. As is having an open dialogue to support employees to remain well.

The impact of an employee on sick can have a direct impact on other colleagues and their workload. Employers can help to avoid this by being clear that adjustments can be made and encouraging employees to seek help with their health through the organisation wellbeing programme.

Benefits make sense. In a survey of 10,000 employees, these benefits were listed as a preference for the following year:

- Employee discounts (supermarkets, eating out)
- Greater recognition of work (did not include if financial or otherwise)
- Holidays
- At home entertainment
- Free breakfast/lunch
- Present on your birthday



Our February Clarkslegal survey poll on LinkedIn showed **47% preferred free breakfast/lunch** over gym discounts (37%), relaxation apps (16%) and home entertainment (0%).

Employees are also asking for financial share. Employers should do their analytics to decide if of the following is of benefit:

- Pay should increase if you are saving on office costs (have shut down several offices)
- Contribution to household bills

FLEXIBLE WORKING

If you put flexible working into your job description you may attract more talent.

The current law S80 of employment rights Act & Flexible Working Regulations 2014:

- It is a statutory right to request a change to employment contract (hours, time, place of work).
- It will be a permanent change (unless agreed otherwise).
- Limited to employees (not workers) employed for 26 weeks continuously.
- The employee has the right to make one flexible working request per year.

Making flexible working requests

There is no need for an employee to give a reason for wanting flexible working. But the request must be made in writing, and specify change applied for with start date. They must explain the affect change will have on employer and how to deal with it.

The employers duties are to:

- Deal with application in reasonable manner.
- Notify employee of decision in 3 months (or longer if agreed.)
- Only refuse a flexible working request for one or more of 8 business reasons.

Employers 8 business reasons to reject Flexible Working Request

1. Burden of additional costs
2. Detrimental effect on ability to meet customer demand
3. Inability to reorganise work amongst existing staff
4. Detrimental impact on quality
5. Detrimental impact on performance
6. Insufficiency of work, during the period is the employee proposes to work
7. Planned structural changes
8. Other grounds Secretary of State may specify by regs.

Read our article on [flexible working post-pandemic](#).

SUPPORTING MENOPAUSE AT WORK

The NHS states that the average age for menopause transition in the UK is 51. Women over the age of 50 are the fastest growing group in the UK workforce according to the Office for National Statistics, with the number of 50 to 64-year-old women in work currently at 4.4 million.

On 23 July 2021 an inquiry was launched by the House of Commons Women and Equalities Committee seeking views on whether more legislation is required to better protect women going through the menopause while at work including whether employers should be required to have a workplace menopause policy in place. The inquiry closed in September 2021 and further guidance on this is awaited.

Read our article on [how employers can provide support for working women](#).

RESTRICTIVE COVENANTS IN EMPLOYMENT CONTRACTS

The Department for Business, Energy and Industrial Strategy (BEIS) launched a consultation in December 2020 on the possible reform of post-termination non-compete clauses, which included views on whether to ban them entirely.

This consultation also referred to exclusivity clauses in employment contracts and sought views on whether to extend the ban on their use (currently they are banned for zero-hour workers) to cover low paid employees.

The consultation closed last year and, so far, there has been no development in relation to this.

LEGAL SUPPORT

For detailed employment law advice tailored to your business contact our Employment lawyers at Clarkslegal LLP.



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