

DRAPER LANG QUARTERLY



Welcome to our Spring Draper Lang Quarterly Update. Here we share some employment news highlights and look at what's coming up to help your business planning.

Remote and hybrid working; have you considered the legal essentials?

THE PANDEMIC FORCED THE HAND OF MOST EMPLOYERS INTO A REMOTE OR HYBRID WORKING MODEL. INITIALLY PEOPLE THOUGHT IT MIGHT BE TEMPORARY, BUT IT SEEMS EMBEDDED AND HERE TO STAY. SO, IF YOU HAVEN'T YET, NOW IS THE TIME TO CATCH UP WITH THE LEGAL IMPLICATIONS OF THE CHANGES OF THE LAST TWO YEARS

Update employment contracts. Contracts must state the employee's normal place of work. A permanent move to remote or hybrid working will be a change to terms and conditions. Employees should be consulted and contracts updated. Employees who like their the new working pattern are likely to agree the changes, but specific concerns will need to be addressed via consultation.

Consider: Will you include **minimum expected attendance in the office**? Will these be set days, or flexible? Requirements to attend the office from time to time should be included. This may include for training, meetings, appraisals or disciplinary issues.

Do you need to **limit the geographical remit** from which employees can work remotely, to ensure employees can come in if needed? Employees might want to work abroad but it is not as simple as the technology allows as there may be employment law and tax implications.

Hours of work - have you set boundaries on working time? Can the employee work when they want, are there core hours in which they must be available, or must they strictly observe their hours? Contracts and policies should set clear expectations. **Working Time Regulations** limits apply, including record-keeping obligations. Breaks and balance are needed to **protect wellbeing**.

Salary and benefits - these should not be less favourable for hybrid or remote workers than comparable employees, otherwise the employer risks claims for discrimination. If you offer on-site perks, such as subsidised meals, what alternatives can be put in place to motivate and reward home workers?

Expenses. There is no legal obligation to cover costs incurred by home workers, but you might choose to offer a contribution. Contracts and **expenses policies should be updated** to reflect what can be claimed, to avoid confusion. An **energy price rise contribution** could be an easy engagement win.

Confidentiality and GDPR - Update contracts and policies to add precautions such as storing data securely in the home. **Take practical steps**; give a shredder or secure filing cabinet. Communicate the importance of data handling.

Will you engage in **remote monitoring**? Are your **Employee Privacy Notices** up to date? Will you add **a right to enter an employee's home** to recover property, carry out risk assessments or otherwise? Don't leave these things to chance.

Is it forever? The return to the office is still in a state of flux, consider whether to include a **trial period** or retain the right to revert back to a more traditional model if it doesn't work out. Contracts and policies should reflect this.

Health and safety Employers must still provide a safe place and system of work and risk assess appropriately. Don't forget these vital steps.

Finally, when was your Handbook last reviewed? Have you added a **Hybrid Working Policy**? Do your other policies need to be refreshed taking the above into account?

WE ROUTINELY HELP OUR CLIENTS WITH THESE CHALLENGES, CONTRACT CHANGES AND POLICY UPDATES. PLEASE [TALK TO OUR TEAM](#) TO SEE HOW WE CAN SUPPORT YOU.



An extra bank holiday for all?

Many people are looking forward to the Jubilee bank holiday weekend. In case you have missed it, the late May bank holiday will be moved to Thursday 2 June and **an additional bank holiday weekend has been granted on Friday 3 June** to celebrate the Queen's platinum jubilee, giving many the opportunity to take a 4 day weekend.

But are employers obliged to pay give employees this additional day as paid leave?

The answer lies in the holiday clause in the employment contract. If the contract just says the number of days' holiday allowed without mentioning bank holidays at all, there is no entitlement to this extra day. The same applies where the contract states that the employee is entitled to 28 days' holiday including all statutory and bank holidays.

However, if the contract states, for example, 20 days of paid holiday **plus statutory and bank holidays**, employers will have to allow an additional day's leave. Check the wording carefully though, if the contract gives entitlement to **'the usual bank holidays in England and Wales**, then there is **no entitlement** to this extra day. Please [contact the team](#) if you would like us to take a look.

News round up

- **COVID-19:** The Covid-19 restrictions are relaxing across the UK. Check our [website Insights page](#) for our thoughts and further guidance for employers and HR on the Living With Covid-19 plans.
- **Compensation limits increase** - the annual increases to compensation limits and statutory payments (all overleaf) will apply from April 2022.



- **Can a whistleblower remove confidential documents from their employer for the purpose of taking legal advice?** Fortunately not. In this recent case an employee had taken, and refused to return/delete, over 100 sensitive and confidential documents belonging to his ex-employer. He said he had taken them for the purpose of seeking legal advice, and wanted to retain them because he didn't trust his ex-employer to disclose them in his pending whistleblowing litigation. The High Court granted an interim injunction for the return and deletion of those documents. There was no justification for allowing the ex-employee to 'pre-empt' what might happen during disclosure on the assumption the employer would not comply with its obligations.
- **Agency worker rights re job vacancies** - In a surprising decision the Court of Appeal held that Reg 13 of the Agency Workers Regulations 2010, which gives agency workers the right to be informed by the hirer of any relevant vacancies, does not give agency workers the right to apply, and be considered, for vacancies on the same terms as the hirer's own employees (Kocur v Angard Staffing Solutions Ltd & anor)
- **Right to Work Checks** - will be changing from 6 April 2022. A new digital verification tool is planned for checks to British and Irish nationals and the end date for temporary adjusted (remote) checks has been extended to 30 September 2022. More information can be found [here](#)

KEY DATES

Annual April rate rises:

- 1 April 2022 - National Living Wage rises to £9.50 per hour for those aged 23 and over. The full National Minimum Wage rises can be found [here](#)
- 1 April 2022 - Statutory rates of Maternity Pay, Paternity Pay, Shared Parental Pay and Adoption Pay all rise to £156.66 per week
- 6 April 2022 - the cap on weekly pay for calculating statutory redundancy payments and the unfair dismissal basic award will rise to £571 in respect of dismissals on or after this day. The overall unfair dismissal compensatory award will rise to the lower of the employee's gross annual salary or £93,878
- 6 April 2022 - National Insurance contributions for employers and employees rise by 1.25% to fund health and social care

- 11 April 2022 - weekly Statutory Sick Pay rises to £99.35

4 April 2022 - Gender Pay Gap reporting deadline for private sector employers and voluntary organisations with a snapshot date of 5 April 2021

2 & 3 June 2022 - The Jubilee Holiday Weekend!
As above, consider in advance whether employees will receive an extra days' holiday this year.

The Employment Bill is still expected at some point, but there is no date at present. See [our Winter Update](#) for details of what it will contain.

The Disasters Emergency Committee appeal to support Ukraine can be found [here](#).

We love to hear from you, so please [get in touch](#) if you would like to know more about anything featured in this update, or to give us any feedback.

