



SUMMER 2023

DRAPER LANG QUARTERLY



Artificial Intelligence and ChatGPT

'ChatGPT' was only launched in November 2022, however it has taken the world by storm and sparked new discussions and debates around the use of all things Artificial Intelligence (AI) within the workplace.

In case you have been living under a rock, ChatGPT is a form of [modern day magic](#). This AI creation can answer questions, write essays, prepare marketing materials, draft job adverts and even write software. ChatGPT was estimated to have reached 100 million monthly active users only two months after its launch, which makes it the fastest-growing consumer application ever. [To give this scale, ChatGPT did in two months what Twitter did in five years.](#)

Having tried it, it is far from perfect and lacks the nuance that it will no doubt have one day, but it is very impressive and is absolutely part of the future of the world of work, without any doubt. That future is already here...

Deloitte's annual survey of the UK's digital behaviours found that the equivalent of [4 million people have used generative AI, such as ChatGPT for work](#). Over a third of these use it weekly or more. There is a fear that AI will reduce jobs, but an Experis survey of over 2,000 British employers reported that it could have a positive impact on headcount in the next 2 years, taking a positive view that AI tools and technologies could help upskill, reskill and even aid employee engagement if used well.

ChatGPT is not fact checked and should be used with care – a lawyer was picked up by a US District Judge for citing non-existent cases as a result of using ChatGPT in his research, so beware!

This month the House of Commons has published a research paper on AI, considering uses of AI at work and identifying [employment law implications](#), such as the impact on [trust and confidence](#). How can decisions be explained when they were made by AI, for example? What about the [potential for bias and discrimination](#) when using AI? [How will privacy and GDPR be impacted?](#) We will learn these things together! Apparently the UK's approach to AI is not as interventionist as the EU, but more so than the US. It will be interesting to see how this evolves.

There is [no guarantee of any form of data protection or privacy](#) when implementing data into an AI software as it saves the data entered into it to "learn from it". This creates potential problems for companies in terms of their confidential information, and the confidential information entrusted to them by their clients. [Do you know if your employees are inputting sensitive information into ChatGPT? Do you have rules to cover this?](#)

We have a policy on AI in the workplace, contact us if you would like to know more!

Welcome to the late summer edition of the Draper Lang Quarterly.

Here we share some employment news highlights and look at what's coming up to help your business planning.

Flex working update

The [Employment Relations \(Flexible Working Act\) 2023](#) has successfully passed through parliament and will shortly be in force (date TBC). As a result, employees will be able to make 2 flexible working requests in any 12 month period, requests must be dealt with by employers within 2 months of the request (not 3 months, as now) and requests will not be able to be refused without consultation with the employee. [Now is a good time to update your policies ready for the changes ahead.](#)

Note that employees still need 26 weeks' service to make a request for flexible working. The Government has said that it [will make flexible working requests a day 1 right, but has not made any legislation to do this yet.](#) In the meantime, Tesco and some other employers have got ahead of the curve and started to offer flexible working as a day 1 right. That change is certainly coming!

ACAS has launched a [consultation](#) on updates to its Code of Practice regarding handling requests for flexible working. The draft Code encourages employers to take a positive approach and not to reject requests without open minded consideration.

[TALK TO OUR TEAM](#) IF YOU WOULD LIKE TO KNOW
MORE ABOUT ANYTHING IN THIS UPDATE.

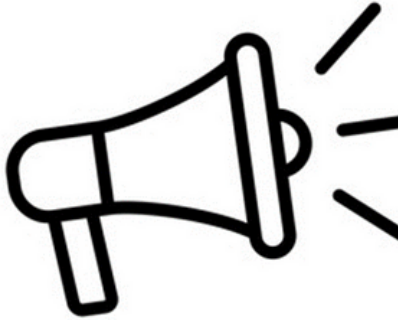


In case you missed it!

Here's a run down of some things that may have passed you by this summer...

- [Non-compete clause reform](#) - the Government announced an intention to limit post employment non-compete clauses to 3 months. Non-solicitation clauses won't be affected. There is no implementation date, so it is possible this change won't happen.
- Holiday pay reform! Another announcement earlier this summer was that, subject to consultation, [rolled up holiday pay](#) which has been technically unlawful for years, [WILL be allowed](#). The proposal is that it will be paid at 12.07% of pay. No implementation date as yet.
- [The EU Revocation and Reform Bill](#). We have [previously written about](#) the concerns about this legislation and the 'sunset' clause which was set to wipe thousands of pieces of EU derived legislation from the statute books, with nothing in their place. [The good news is that this clause has been abandoned](#). Now the only legislation which will 'disappear' is legislation which has been individually considered by Parliament. This is so much better for business planning!
- [Record levels of long-term sickness](#) in the UK -figures from the ONS show 2.55 million people in the UK are left out of work for extended periods of time as a result of suffering from long-term illness. This number has soared as the effects of 'Long Covid' are still felt. In a related point, [new Government consultation on the provision of occupational health at work](#) has been launched with the aim of improving workplace support to boost productivity and prevent ill-health unemployment. Consultation closes on 12 October 2023.
- [Cost of living impact on mental health](#) - an ACAS survey had found the mental health of 10% those surveyed was significantly affected by the cost of living; 37% reported a moderate impact. Employers are being advised to be approachable and available to employees and to encourage them to talk if they are experiencing problems

- **'Right to Switch Off'** – Labour announced that, if elected, they would consider policy encouraging employees to disconnect from devices outside of working hours. Similar legislation has proved successful in France and is helping people regain a healthy work-life balance.
- Rather sadly, the International TUC's annual **Global Right's Index** which rates countries depending on their compliance with collective labour rights and documents rights violations by governments and employers, has **downgraded the UK's rating** from a 3 to a 4 on a scale of one to five, the first time in over a decade the UK has dropped in these rankings.



Tribunal news

- **Reasonable adjustments** - *AECOM Ltd v Mallon* - the employer was under a duty to make reasonable adjustments when its requirement to create an online profile and application put a candidate with dyspraxia at a substantial disadvantage. The applicant failed to explain his difficulties with the online application, **but the employer did not dig deeper**. The Tribunal found that the potential employer ought to have realised that someone who had said that they have difficulties replying online should at least have been telephoned when they failed to reply to an email asking for details of the challenges they faced. **The lesson? Dig deeper!** And increase your awareness of neurodiversity. [More here.](#)
- **Agency workers cannot cover striking staff** - It is (again) unlawful for agency workers to be brought in to cover staff who are on strike. This was always the case but, against a backdrop of strikes, the Government changed the law to allow agency workers to cover. 13 unions successfully challenged this, the High Court finding that the Government had failed to comply with its duty to consult about the proposed change. **The takeaway? Agency workers cannot be used to cover striking staff.**
- **Tribunal practice and procedure**– New forms have been issued by HMCTS for filing and defending claims. The old forms are technically invalid now, so make sure if you bring or defend a claim you use the up to date forms on the gov.uk website. Or ask us to help!

COMING UP

Expect more on AI... An AI regulatory roadmap is expected to be published over the long term (well into 2024) and a draft AI risk register for consultation is expected

Risk assessment templates, Government guidance and other tools will also be issued, including assurance techniques and voluntary standards.

The Employment (Allocation of Tips) Bill has received royal assent and some of its provisions are in force. The main provisions, which will require

employers to fairly allocate tips over which they exercise control or significant influence and pay them to workers in full within a month of payment by the customer, come into force next year.

Illegal working - a significant increase in penalties has been announced which will take effect in 2024.

The civil penalty for employers who employ an individual without the appropriate immigration permission will be tripled to £45,000 per illegal worker for an initial breach and to £60,000 per illegal worker for repeat breaches.

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.

