

DRAPER LANG QUARTERLY



The Employment Law Partnership

WHAT MIGHT CHANGE IN EMPLOYMENT LAW IF LABOUR WIN THE NEXT ELECTION?

AT THE LABOUR PARTY, TUC AND AND NATIONAL ANNUAL WOMEN'S CONFERENCES, VARIOUS POLICIES OF INTEREST TO EMPLOYERS WERE ANNOUNCED. HEADLINES BELOW

Angela Rayner MP has said that [Labour would introduce an Employment Rights Bill within the first 100 days of entering office](#), promising this "cast iron commitment" in their pledge of a "New Deal for Working People".

Labour's proposals include [major changes to unfair dismissal protection](#) - removing the 2 year qualifying period and introducing unfair dismissal rights from day one (though they have confirmed that employers could dismiss during 'trial periods'), removing the limits on compensation for unfair dismissal claims and extending time limits to bring Tribunal claims.

There remains a commitment to [outlaw 'fire and rehire'](#) (dismissing and offering reengagement on different, typically less favourable, terms), though how this will be effected remains to be seen.

Employment status too, is to be reformed to [create a single status of worker for all but the 'genuinely self-employed'](#), the latter concept being a minefield already in light of IR35 and the off-payroll working rules.

There is also a well-publicised aim to [ban zero hours contracts](#) as well as to improve sick pay and a wish to balance work and home life, including a potential ['right to disconnect from work'](#).

[Discrimination will be further challenged](#) with policies to address the gender pay gap, tackle structural racism, publish disability pay gap reporting and to tackle sexual harassment, including introducing an active duty on employers to take reasonable steps to stop sexual harassment before it starts.

[Trade unions](#) will enjoy more rights to access workplaces, union recognition will be modernised so that gig economy and remote workers can 'organise meaningfully' and recently passed union legislation would be repealed, including related to the Strikes (Minimum Service Levels) Act 2023.

Even one or two of these changes would be significant, but together the package could be [transformative of the UK employment law landscape](#).

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

Draper Lang success!

Hot on the heels of being ranked as a [Top Tier law firm in the Legal 500](#), and again ranked in the Chambers and Partners legal directory, we are proud to say that we are in [The Times Best Law Firms 2024!!](#)

This survey seeks to find the [top 250 legal practices](#) in England and Wales. Given that there are around 9,500 law firms, we're thrilled to have made the list!

[Thank you](#) to our wonderful clients and peers for your kind feedback and support, we really appreciate it.

To share the celebration - we have a champagne prize draw! Simply email office@draperlang.co.uk with the subject line of "Times Top 250" to be in with a chance of **winning a bottle of champagne!!** Good luck!

Menopause: £37k claim & new guidance for employers

There is a growing awareness in society of the need to take account of the impact of menopause in a work context, and employers need that same awareness.

Sadly, this was not in evidence for Karen Farquharson in her Tribunal case against her employer, Thistle Marine, recently reported in the national press.

[Despite her 27 years of service](#), rather than showing some understanding when Mrs Farquharson explained that she had been absent because of heavy menopausal bleeding, [her employer looked disgusted and walked away](#).

Later he made derogatory statements, including: "menopause a *biddy* gets it", "*just get on with it*" and "*that's your excuse for everything*."

The upshot for the company was an award against it of over £37,000 for the Claimant, equating to just shy of a year's salary.

By contrast, the Government has been showing off its credentials in this area, [publishing a policy paper providing a summary of the work of its Menopause Employment Champion and signposting employers to further guidance](#).

It is well worth taking a look so that you can support your team, and of course avoid becoming a news story! Your organisation may even want to sign the [Menopause Workplace Pledge](#).

We regularly advise employers and employees seeking to support employees in menopause and navigating discrimination risks that might result.

Please [Talk to our Team](#) if you would like to know more

Other news and Tribunal round up



- **Holiday pay stop press:** A claim for holiday pay must be brought within three months of the underpayment, or within three months of the last underpayment where there is a series of underpayments. A landmark case (*Bear Scotland*) decided that a series of unlawful deductions was broken by a gap of three months or more, however the Supreme Court has now decided in a case involving the PSNI, that this is wrong. **It found that underpayments of holiday pay are NOT broken by a correct payment nor by a gap of more than three months between underpayments.** This exposes employers to **more potential liability** for unpaid holiday, although there is a two-year maximum claim period in Great Britain, albeit not in Northern Ireland where this case applied.
- **'Deadnaming': A Trans woman has won £25k** after bosses at *Kingston Council* took 2 years to change her identity on their systems, including pension records, door pass and the staff directory. To illustrate the approach, her locker had a post-it note with her previous name crossed out and her new name written in its place. £21k of the compensation was injury to feelings for the impact the treatment had on her health.
- The ICO has published detailed [guidance on monitoring at work](#). This is worth a look given that the ICO have just fined TikTok EUR345 million for misuse of data, showing that the regulator is not afraid to issue big fines.
- **Costs award** - it is hard to obtain costs in the Employment Tribunal, but not impossible. The Claimant's lies in the case of *Cairns v The Wellness Zone* **had potentially career ending consequences** for her employer. Unusually, the Claimant admitted that because of her conduct costs were appropriate and £20k costs were awarded against her!

COMING UP

7-11 November is International Stress Awareness Week

The National Minimum Wage for those over 23 (formally called the National Living Wage) is set to increase to at least £11 per hour from April 2024 as recommended by the Low Pay Commission.

From April 2024 the minimum age for the NLW will move from 23 to those aged 21 and over.

By the end of 2023 the Government is expected to publish a consultation on the Code of Practice that will accompany the Employment (Allocation of Tips) Act 2023. The Act itself is expected to be brought into force by secondary legislation in May 2024.

Two new laws are set to come in from mid to late 2024, with no dates set for either yet:

1. The Workers (Predictable Terms and Conditions) Act 2023 will give some workers who have an unpredictable working pattern, the right to apply for a more predictable pattern. The process and rights will be similar to the Flexible Working Regulations.

2. The Carer's Leave Act will give employees a statutory right to a week's unpaid leave to care for a dependant. This will apply to employees only and will allow them to provide or arrange care for a dependant with a long-term care need. There will be no requirement for an employee to evidence their entitlement to the leave.

We'll keep you posted!



We love to hear from you, [get in touch](#) if you would like to know more