



WINTER 2024

# DRAPER LANG QUARTERLY



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

## New year, LOTS of new laws!

2024 WILL BRING A LOT OF EMPLOYMENT LAW CHANGES. SOME YOU WILL HAVE HEARD OF, OTHERS MAY TAKE YOU BY SURPRISE.

There are laws which simply confirm various holiday pay and discrimination laws which arose in EU cases remain UK law post-Brexit, which mean you will need to check holiday policies, but there are far bigger changes than this!

There is [good news for employers of casual and part-year workers](#), who are now allowed to return to the practice of paying 'rolled-up' holiday pay, and they are allowed to calculate it at 12.07%. This is a real, 'if you know, you know' as the previous rules were a nightmare!

Good news too for employees who will receive greater [protection from sexual harassment](#) with new duties being imposed on employers later in the year.

[Good news for TUPE haters](#) in small businesses, or those carrying out very small transfers - the consultation burden is being reduced.

And [good news for flexibility](#) - flexible working becomes a day 1 right in April with further changes to the legislation. [And for those with too much flexibility - the right to request more predictable terms](#) will be in place from September.

There is a lot for busy HR departments to do. There are changes that can't be missed, [a new right to unpaid leave for carers](#), new [protections from redundancy for pregnant workers](#) AND an [extension of the redundancy protection already in place from during maternity etc leave to 18 months from birth/adoption](#) - the protection will apply to those who have taken 6 weeks of SPL too.

It's a year to keep on top of changes and to [train your managers and HR teams](#) to avoid being caught out.

On top of it all, [it's an election year](#), and with Labour's 'first 100 days' employment pledges ([see our last update](#)), we might see an unrecognisable employment law landscape ahead!

As there are so many changes, we've taken the unusual step of dedicating the whole issue to listing them, and setting out actions for employers to consider. We hope it's a useful guide and look forward to seeing how much of this has happened when we look back in January 2025!

## IMMEDIATE CHANGES: 1 JANUARY 2024

**Holiday and working time** - Regulations confirm the following post-Brexit:

- **Holiday carry over rules** established by EU cases remain part of UK law:
  - all statutory annual leave is carried over where leave cannot be taken due to family leave (maternity leave etc);
  - 4 weeks' statutory annual leave a year can be carried over for up to 18 months where a worker cannot take their leave due to sickness;
  - 4 weeks' annual leave is carried over if workers are not given the opportunity to take holiday or not told that untaken holiday will be lost.
- **Holiday pay ('normal remuneration') must include** commission payments and other payments, such as regular overtime;
- Requirements for employers to **record working hours and rest breaks of all workers is removed** (some record keeping requirements remain).

**ACTION:** Check your holiday policies, especially holiday pay calculations and rules about carry over. Plan ahead for holiday changes in April, read on.

### Changes from 1 January 2024 to the Equality Act:

- **Indirect discrimination by association** is confirmed in UK law post-Brexit- people that don't hold the same protected characteristic as the discriminated person but who suffer the same disadvantage, can claim;
- Statements against recruiting people with certain protected characteristic is direct discrimination, even where there is no identifiable victim;
- **Discrimination due to breastfeeding is sex discrimination.**
- The definition of disability is also updated - a person's ability to carry out normal day to day activities includes their ability to participate fully and effectively in working life on an equal basis,

**ACTION:** Check your Diversity, Inclusion and Equality Policies are up to date and, **as you should every year, ensure that all colleagues are trained** on all things DE&I. **Policies are NOT enough!**

### 22 JANUARY - NEW ILLEGAL WORKING FINES

Fines of **£45,000 for first breaches and £60,000** for repeat breaches, apply to all right to work checks from 22 January 2024.

**ACTION:** Make sure your processes and records are in order. [Guidance here.](#)

**'SPRING' 2024** -New Code on Fire and Rehire to be published,

### 1 APRIL 2024 - HOLIDAY PAY CHANGES

- **Rolled up holiday pay (calculated at 12.07%) will again be lawful** for part year workers and those who work irregular hours (for leave years starting 1 April 2024);
- A **new method for holiday accrual** comes into force for irregular hours and part-year workers (which may include some agency workers), based on 12.07% of the hours worked in the previous pay period

**ACTION:** Check and update your holiday policies, especially how holiday and holiday pay are calculated. Make sure payslips are clear and put safeguards in place to ensure that these workers actually take their holiday. New Government guidance can be [found here.](#)

## 1 APRIL 2024 - DON'T FORGET - MINIMUM WAGE RISES

We'll remind you closer to the time, but plan now for the significant increase to **£11.44 for those aged 21 and over**, £8.60 for 18-20 year olds and £6.40 for those aged 16-17 and apprentices.

## BIGGER CHANGES: 6 APRIL 2024 (likely!)

### Flexible Working becomes a day 1 right, and other related changes

- Currently an employee must have 26 weeks' service to make a statutory request for flexible working. This will become a day 1 right on 6 April 2024.
- Other changes to flexible working rules come in force in April too, including that 2 requests can be made a year and the total response time for employers reduces to 2 months from the date of the request [more here](#).

**ACTION:** Update your flexible working policy and train HR and managers.

### Carer's Leave to be introduced

- **Employees will be entitled to one week's unpaid leave each year** to provide or arrange care for a dependent with a long-term care need.
- Requests can be in consecutive or non-consecutive half or full day
- At least **twice the amount of notice** as the period of leave requested must be given by the employee. This does not need to be written.
- **Employers can postpone requests** if the business would be unduly disrupted but must allow leave within a month of the date requested.
- Employees will be **protected from detriment and dismissal** because they take or seek to take carer's leave.

**ACTION:** Train HR and Managers, draft a relevant policy but, more importantly, **think about what more you can offer** as an employer of choice - fully paid leave perhaps, greater flexibility, relevant benefits?

### Protection from redundancy extended: pregnant employees and those on maternity leave, adoption leave or shared parental leave (SPL)

- Current regulations require that people on family leave should be offered first refusal in any suitable alternative role in redundancy.
- This **protection is extended to 18 months** from birth/1st day of the estimated week of childbirth/placement and **pregnant employees will be protected too**, not just those on leave.
- In cases of SPL, the employee will only be protected if they have taken a period of at least 6 consecutive weeks of SPL.
- Pregnancy protection applies where the employer is informed of the pregnancy on or after 6 April 2024.

**ACTION:** Get those policies updated and, yes, more training is needed for HR colleagues and managers. **Without it, people will be caught out!**

## JULY 2024 TUPE GETS EASIER FOR SOME!

TUPE will become slightly simpler, where it is on a smaller scale!

New Regulations state that businesses with **fewer than 50 employees** and any businesses undertaking a TUPE **transfer of fewer than 10 employees**



can consult direct with employees if there are no employee representatives in place.

This applies to [transfers taking place on or after 1 July 2024](#).

## JULY 2024 - ALLOCATION OF TIPS

This legislation requires employers to ensure that 100% of tips go to workers, in 'fair allocation' and without deductions. Non-statutory guidance will also be published.

## SEPTEMBER 2024 (likely) - RIGHT TO REQUEST PREDICTABLE TERMS

The Workers (Predictable Terms and Conditions) Act 2023 is expected to come in force in September. It [introduces a new statutory right for workers to request a more predictable working pattern](#).

[This will apply to](#) workers and agency workers with 26 weeks' service who:

- have a working pattern which lacks certainty; or
- are on fixed term contracts of a year or less (who can request to extend the fixed term or make the contract permanent);

A maximum of [2 applications will be allowed in any 12 month period](#) and the application must specify the change applied for and date it is requested to take effect. The request can relate to [hours of work, days of work or period of engagement](#).

**ACTION:** Be aware of the requirements and keep a watch out for the final legislation.

## OCTOBER 2024 - SEXUAL HARASSMENT

[New worker protections](#) against sexual harassment will come into force in October. Employers will have [a new positive duty to take reasonable steps to prevent sexual harassment](#) of their employees. Tribunals will be able to uplift any compensation awarded by 25% where employers have breached this new duty.

**ACTION:** The new law doesn't go as far as to explicitly protect employees from sexual harassment by third parties as was initially proposed, but employers ought to [communicate what is and isn't acceptable, provide training](#) on what constitutes discrimination and harassment, with sexual harassment being a key part of that training, [set the culture and tone internally and with suppliers/customers/clients](#). make sure employees know how to raise issues, and give them the [confidence to know that you will take prompt and decisive action](#) if discrimination or harassment occurs.

**APRIL 2025 - NEONATAL CARE LEAVE AND PAY - we'll keep you posted**

## AND....2024 IS AN ELECTION YEAR (probably)!

If we have a Labour Government a whole raft of new employment legislation is promised within their first 100 days. [See our previous update for details](#).

