

DRAPER LANG QUARTERLY



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.

Government shake up of Employment laws

GOVERNMENT PROPOSALS ANNOUNCED IN THE KING'S SPEECH, AIMED TO "MAKE WORK PAY", WILL MAKE FUNDAMENTAL CHANGES TO THE EMPLOYMENT LAW LANDSCAPE. HERE WE LOOK AT WHAT'S COMING, WHEN, AND HOW TO PREPARE.

The biggest changes are in the proposed Employment Rights Bill, which will be issued in the [first 100 days](#) of the new Labour Government.

UNFAIR DISMISSAL - SCRAPPING THE 2 YEAR SERVICE REQUIREMENT

[This is huge](#). Unfair dismissal rights will be available to employees from day 1 of their employment, subject to a probationary period. We do not know how this will work yet, but [employers will lose flexibility, and will have to become a lot more rigorous](#) in managing probationary periods to limit risk. Time to tighten processes and review new starters carefully!

More claims will result, but perhaps more straightforward unfair dismissal claims that are easier to manage than the discrimination or whistleblowing claims currently brought by those with less service to get through the Tribunal door.

The push here is [not just to enhance worker rights but to deliver economic growth](#). Extending protections to workers from day one aims to encourage more workers to switch jobs, associated with higher wages and productivity. According to the Government briefing, wage rises are usually around three times higher for those who move jobs, compared to those who do not.

OTHER DAY 1 RIGHTS

[Sick pay and parental leave will be available for all workers from day 1. Statutory Sick Pay will no longer be subject to a 3-day waiting period](#) (expect more absence!) and [flexible working will become the default](#) from the start of employment, with employers being "required to accommodate this as far as is reasonable" to reflect modern life. How this differs from the current day one right to request flexible working is not clear, other than perhaps a mindset shift.

NEW MUMS PROTECTED FOR 6 MONTHS AFTER RETURNING TO WORK

The Government briefing says that it will be ["unlawful to dismiss a woman who has had a baby for six months after her return to work, except in specific circumstances"](#). This raises questions – will these new protections be limited to those who have given birth? What about adoption, or partners who take an extended period of shared parental leave? We assume there will be some mirroring rights - watch out for the detail. Regardless, this new proposal goes

further than the new (2023) redundancy protections for those returning from family leave.

ZERO HOURS, AND FIRE AND REHIRE - WHAT'S THE LATEST?

'Exploitative' zero hours contracts will be banned to remove 'one sided flexibility' Therefore, **not all zero hour contracts will be banned**. What this means has not yet been set out. What we do know is that workers will have a right to a contract that reflects their normal hours and a right to proper notice of shift changes with "*proportionate compensation for any shifts cancelled or curtailed*".

'Fire and rehire' will not be banned but the aim is to "end the scourges" of it, likely with **tighter rules and greater penalties**. Note that a **new Code of Practice** on the topic came into force this week, but the reforms aim to go further than the new Code, though we have not seen the detail yet.

OTHER CHANGES

Other proposals include a single enforcement body (Fair Work Agency), establishment of a Fair Pay Agreement in the adult social care sector and trade union reform to simplify statutory recognition in workplaces and remove recently introduced minimum service levels during industrial action.

DISABILITY AND ETHNICITY PAY - EQUALITY AND REPORTING

A **draft Equality (Race and Disability) Bill** was also announced, with 2 clear aims, (1) enshrine in law the right to equal pay for people who are disabled and also from ethnic minorities, similar to the right to equal pay for women and (2) introduce **mandatory ethnicity and disability pay reporting** by employers with 250+ employees.

WHEN WILL IT ALL HAPPEN?

Soon, but not immediately. The **new Employment Rights Bill will be introduced to Parliament in the first 100 days** of the new Government. The exact timeline is not specified as the Parliamentary process takes time, but the Labour majority makes it certain that the Bill will pass. It is **likely to be at least a year** before we see these changes in practice, but we will know a lot of the detail before the end of this October, to allow time for employers to plan. Changes related to disability and ethnicity pay gap reporting and equal pay for these groups will be some time later, likely in a few years' time.

[TALK TO OUR TEAM](#) IF YOU WOULD LIKE TO KNOW MORE



Draper Lang News!

We are thrilled to announced that **our team is growing**, with the appointment of 2 new employment lawyers!

Senior Associate Matthew Grant joined us on 1 July. Matthew is an experienced employment specialist who is described by Legal 500 as "outstanding" and "very client focused". Matthew has specialised in complex employment disputes for 15 years and offers clear solution-focused advice.

We are also delighted to welcome **newly qualified Solicitor Amelia Matthews** who has joined after training at a Bristol-based full service law firm. Amelia has great experience working closely with clients and a particular interest in discrimination and equality issues, especially in the context of women's sport.

We look forward to introducing you to them both!



Tribunal and other news



- Issues of [indirect discrimination](#) have been addressed in the recent case of *Hilton-Webb v Minis Childcare*. The Claimant was unable to see printed documents in small fonts. The employer said that small fonts were used for 'management efficiency'. This placed the Claimant at a disadvantage compared to those around her. The Tribunal was scathing of the employer stating, "*there is simply no objective justification for this. There is no legitimate aim, and it cannot be proportionate when the simple thing to do would be to provide documents in larger font*". The case has been remitted for appeal based on a technical point, but the above [provides an excellent example of how "a one size fits all" policy may be indirectly discriminatory](#).
- [French labour laws affect BBC's Olympic coverage!](#) Gabby Logan and Clare Balding will be unable to present this summer's Olympic coverage in the morning and evening as they usually do due to France's strict laws requiring 11 hour breaks between shifts. French labour laws may be stricter than here, however it's a good reminder that all employers should be aware of the rules around rest breaks during and between shifts.
- [Competing rights](#) of discrimination related to [religion and sexual orientation](#) were raised in the case of *Ngole vs Touchstone Leeds*. Touchstone rescinded the job offer it made to Mr Ngole after they discovered his belief, drawn from his religion, that homosexuality is a sin. Touchstone were concerned that their vulnerable LGBTQIA+ service users may come to harm if they discovered his views. Mr Ngole was then invited to attend a second interview in which he provided assurances that his views would not have stopped him from fully supporting any service user, nor had they in the past. The job offer was not, however, reinstated.
- The Tribunal found the [initial decision to rescind the offer was direct discrimination](#) based on Mr Ngole's religion but went on to rule that Touchstone was [justified in not reinstating the job offer](#) after the second interview, taking into account Touchstone's objective of protecting its staff and service users and balancing this against Mr Ngole's rights to freedom of expression, thought, conscience and religion. In the circumstances, the balance favoured Touchstone. This shows [the importance of context](#), and [how important it is for employers to truly listen to all sides before acting](#).

COMING UP

The Workers (Predictable Terms and Conditions) Act 2023 is still expected to come in force in September 2024. It introduces a new statutory right for workers to request a more predictable working pattern.

Under the previous government, the Employment (Allocation of Tips) Act 2023 was expected to be brought into force on 1 October 2024. We imagine that this will go ahead and will confirm once known.

The Worker Protection (Amendment of Equality Act 2010) Act 2023 will come into force in October 2024 placing a duty upon employers to take 'reasonable steps' to prevent the sexual harassment of their employees. Tribunals will be given the power to uplift compensation for sexual harassment by up to 25% if an employer is found to have failed in this duty. The EHRC has opened consultation on its Code of Practice for employers on the point. consultation can be accessed [here](#), and closes on 6 August 2024.

And everything above...watch this space!

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.

