



UK Employment Law Update – April 2022

Welcome to our monthly newsletter, with a summary of the latest news and developments in UK employment law.

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Case law updates



TUPE – information and consultation: The Employment Appeal Tribunal (EAT) has handed down a helpful judgment reminding us that the obligation on an employer to inform and consult with staff on a TUPE transfer only extends to an employer's own employees. There is no TUPE obligation on a transferee (i.e., the employer receiving new employees under TUPE) to inform and consult with transferring staff before a transfer (although this commonly happens as a matter of good HR practice), and therefore no cause of action against the transferee for any failure to do so. Employees may have recourse against the transferor (as their employer at the time of information and consultation obligations), including where the transferee fails to provide required TUPE information. This case also confirms the legal position where a claimant brings a TUPE claim against the transferor having already reached a settlement with the transferee. The EAT agreed with the tribunal's earlier decision that this prevented any award being made against the transferee for its role in the breach. Although a failure to inform and consult claim had not been issued against the transferee, the settlement was sufficient to draw a line under their involvement in the litigation. ([Clark v. Middleton](#))

Confidentiality: The Court of Appeal has held that an employee should have no expectation of privacy or confidentiality in respect of personal emails sent from a business email account. In this case, the business account in question was a general enquiries email address, rather than one in the claimant's name. Had the emails been sent from the latter, there would be a greater expectation of privacy. To minimise any risk of confusion in this area, employers operating general centralised email accounts are advised to also allocate personal email accounts to the staff operating that central account, although employers should also set clear expectations around limiting the use of any business-related account for private emails. ([Brake v. Guy](#))

Employment Tribunal – costs awards: The tribunal rules allow for a costs award to be made where a claim or response is deemed to have no reasonable prospect of success. However, in this case, the EAT has held that an application for a stay of proceedings is not a 'claim or response' for this purpose and, as such, a costs award was not appropriate when that application failed. ([Warburton v. Chief Constable of Northamptonshire Police](#))

Tribunal procedure – open justice: There has been an interesting case this month that has reinforced the importance of the principle of open justice in the employment system. In [Frewer v. Google](#), the EAT provided a helpful judgment setting out the principles to be applied when seeking an anonymisation or redaction order. The EAT reiterated the importance of weighing up rights of privacy and confidentiality against principles of open justice and public interest when considering whether any names or information should be withheld. Overturning the tribunal's granting of an anonymisation order, the EAT was clear that any deviation from the principle of open justice had to be scrutinised carefully, and that although a person, client or other name may not need to be specifically cited for the purposes of the legal issues, there was nevertheless a public interest in names being revealed in many circumstances.

Tribunal procedure – specific disclosure: An EAT decision this month is a helpful reminder that applications for specific disclosure of documents should be focused, with a clear explanation of why each document or category of document is relevant to the live issues of the case. In this claim, the claimant's application was unclear about what she sought and why, causing her application to fail. ([Dodd v. UK Direct Solutions Business Ltd](#))

Trade unions: Section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 protects workers from detriment connected with trade union activities. The Court of Appeal has been considering the scope of the legislation and, in overturning the EAT's decision, has held that it does not extend to protecting workers from detriment for taking part in industrial action. ([Mercer v. Alternative Future Group](#))

Legislative developments

Minimum Wage rate increased: From **1 April 2022**, the National Living Wage (for those aged 23 or over) and the National Minimum Wage (for those of at least school leaving age) increased as follows:

- Age 23 or over: £9.50 (up from £8.91)
- Age 21-22: £9.18 (up from £8.36)
- Age 18-20: £6.83 (up from £6.56)
- Age 16-17: £4.81 (up from £4.62)
- Apprentice rate: £4.81 (up from £4.30)
- Accommodation offset: £8.70 (up from £8.36)

Statutory compensation limit increased: From **6 April 2022**, the following limits apply:

- A 'week's pay': £571 (up from £544)
- Maximum basic award for unfair dismissal: £17,130 (up from £16,320)
- Minimum basic award (for certain automatically unfair dismissals only): £6,959 (up from £6,634)
- Maximum compensatory award for unfair dismissal: £93,878 (up from £89,493)

Statutory sick pay (SSP): From **6 April 2022**, the weekly SSP rate increased to £99.35 (from £96.35).

Parental payments:

- Statutory maternity, adoption, paternity, shared parental and parental bereavement pay increased to £156.66 per week (from £151.97) from **3 April 2022**.
- Maternity allowance increased to £156.66 per week (from £151.97) from **11 April 2022**.

Injury to feelings: The Vento bands for awards for injury to feelings have been updated to take account of inflation. For claims presented on or after **6 April 2022**, the new bands are as follows:

- Lower band (for less serious cases): £990-£9,900 (up from £900-£9,100)
- Middle band: £9,900-£29,600 (up from £9,100-£27,400)
- Upper band (for the most serious cases): £29,600-£49,300 (up from £27,400-£45,600)
- Awards should only exceed £49,300 in the most exceptional cases.

For the latest rates and limits, [see our handy at-a-glance guide](#).



COVID-19 update

Right to work checks: From **6 April 2022**, employers can use Identification Document Validation Technology service providers to digitally verify the identity of British and Irish citizens with valid passports (or Irish passport cards) as an alternative to manual checks (Immigration (Restrictions on Employment and Residential Accommodation) (Prescribed Requirements and Codes of Practice) and Licensing Act 2003 (Personal and Premises Licences) (Forms), etc., Regulations 2022). There are also new versions of the [codes of practice](#) on right to work checks.

Fit notes: From **6 April 2022**, there is no longer a requirement for fit notes to have a wet-ink signature, meaning they can be issued digitally (Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations 2022).

Health and safety: The duty to provide suitable personal protective equipment (PPE) where there is a health and safety risk will extend to workers from **6 April 2022** (The Personal Protective Equipment at Work (Amendment) Regulations 2022).

Apprenticeships: The Apprenticeships (Miscellaneous Provisions) (Amendment) (England) Regulations 2022, which introduce a pilot of 'flexi-job' apprenticeships in the creative and construction sectors, have now been passed and come into force on **6 April 2022**. The pilot provides variety and flexibility for apprentices to carry out short-term or project-based placements with a number of organisations. The pilot is expected to last up to 24 months, although it will be reviewed periodically. If successful, the flexi-job scheme may be extended.

Other news

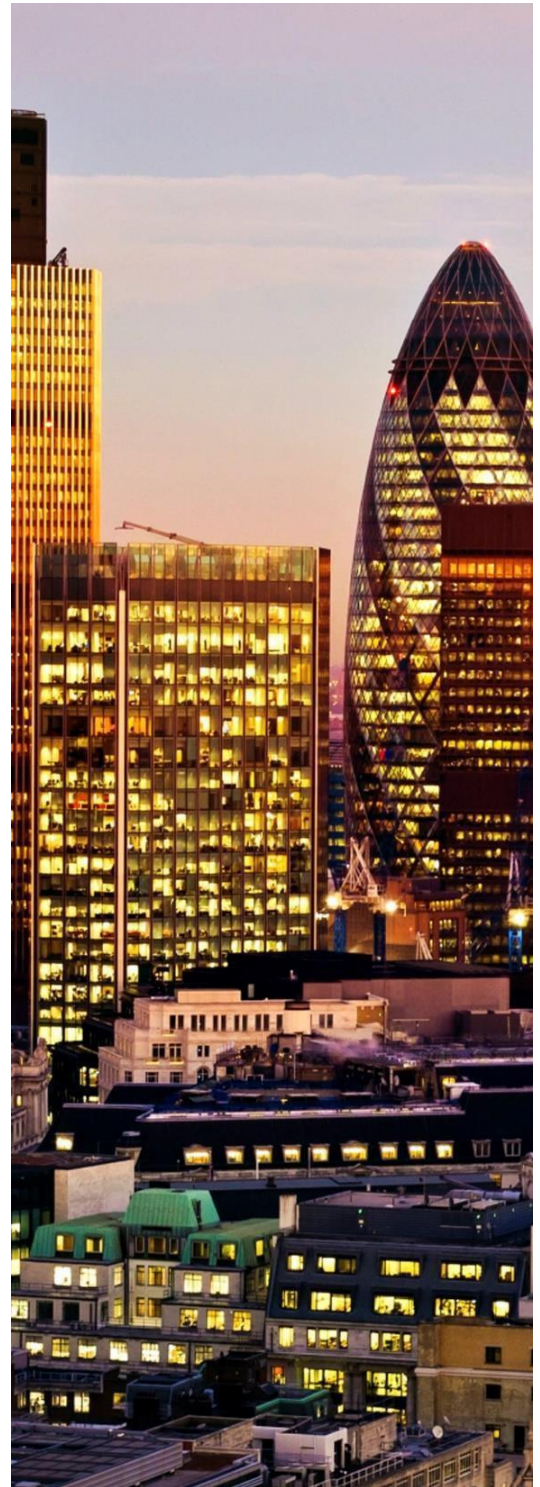
Ukraine: Events in Ukraine are creating unique issues for employers with both Ukrainian and Russian staff. However, the UK government has not introduced any specific guidance to address the developing situation from an employment and workplace perspective. As such, usual employment laws and principles apply.

Redundancy: There have been numerous media reports of large-scale redundancies earlier this month, with various commentary on the legality of the company's actions. [Read our blog post](#) for a reminder of the key principles of redundancy law in the UK.

Fire and rehire: Having previously indicated that there was no intention to develop new law in this area, the government has [announced](#) its intention to introduce a new statutory code on the practice. The statutory code is expected to detail the consultation process to be followed where there are proposed changes to terms and conditions, and to give practical steps for employers to follow. It is also expected that the tribunals will be given power to uplift compensation by up to 25 per cent where there is unreasonable non-compliance. No timescale has been provided. Read our thoughts on the [Employment Law Watch blog](#).

Minimum wage (seafarers): The government has announced plans to check that all UK ferry operators are compliant with the National Minimum Wage. The government will also legislate to allow ports to turn away vessels from ferry companies not paying the National Minimum Wage (and will urge ports to refuse access pending the passing of such legislation). The transport secretary has also indicated that he has opened talks with his counterparts in a number of European countries to discuss a 'minimum wage corridor' for maritime workers operating on direct routes to and from the UK. Read more on the [Employment Law Watch blog](#).

National Insurance: In his Spring Statement, the chancellor confirmed that the planned National Insurance increase by 1.25 percentage points (from 12 per cent to 13.25 per cent) will go ahead from **6 April 2022**. However, he also announced that the threshold for paying National Insurance will increase from £9,880 to £12,570 in **July 2022**, meaning employees can earn more before payments become due.



IR35 penalties: When the IR35 regime extended into the private sector in April 2021, there was a 12-month grace period on penalties for non-compliance to allow time for businesses to adapt. That grace period comes to an end on 5 April 2022, meaning that from 6 April 2022, the failure by employers to take reasonable care over their application of the rules could result in significant fines.

Immigration: The UK government has published a [statement of changes](#) to immigration rules. This sees the introduction of a new Global Business Mobility category, with new routes for senior or specialist workers, secondees and certain employees working for overseas companies that are expanding into the UK. There is also a new High Potential Individual route (for attracting elite talent) and a Scale-Up route (for businesses with high growth needing skilled workers from abroad).

Pay transparency: The UK government has launched a [new initiative](#) to help improve pay transparency in recruitment, with the aim of helping to reduce pay inequity and attracting more women to roles. Employers participating in the pilot initiative will include a salary range in advertisements and will not ask candidates to declare their pay history, two steps that are thought to improve candidates' ability to negotiate fairer pay.

Workplace harassment: The UK government has ratified the International Labour Organization's Violence and Harassment Convention, an international treaty recognising everyone's right to work in a place free from violence and harassment. The government has also reiterated its intention to legislate to introduce a new duty on employers to prevent sexual and third-party harassment in the workplace.

Racial inequality: The government has published a response to the [Commission on Race and Ethnic Disparities report](#), which recommended a number of actions to address ethnic and racial inequalities. Key points to note are:

- **Mandatory ethnic pay gap reporting:** This will not be introduced, although guidance on voluntary ethnicity pay gap reporting is due to be published later in 2022. Employers voluntarily publishing their ethnicity pay gap data will also be required to publish a diagnosis and action plan.
- **Artificial intelligence (AI):** Guidance will be issued on applying the Equality Act 2010 to algorithmic decision making. We can also expect a white paper later in the year with details of how to address potential racial bias in AI based decisions.
- **Terminology:** The government has conceded that the acronym BAME is unhelpful and is ceasing to use this term, saying it is more helpful to refer to specific ethnic groups.
- **Funding:** The Equality and Human Rights Commission is receiving increased funding for compliance, enforcement and litigation.
- **Positive action:** We can expect updated guidance for employers on positive action.
- **Accessibility:** There will be a targeted campaign around apprenticeships, and an enterprise programme will be created for entrepreneurs and under-represented people.

Neurodiversity: A new business forum, [Neurodiversity in Business](#) (NiB), has been launched to support neurodiverse employees in the workplace and for member organisations to share good industry practice. It is a voluntary forum with no membership fee.



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