

Employment Law Changes in 2022

By Jonathan Maude, Daniel Stander and Rachel Easton

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The COVID-19 pandemic is still very much on the agenda for 2022, but there are other legislative developments and key dates that business leaders need to be aware of.

Delays to key employment legislation in 2021 have created a potentially busy employment/HR programme for 2022. This year will be a time for focusing on change and adaptability for many businesses. Hot topics such as mandatory vaccination, the long-awaited Employment Bill, remote working and the onslaught of potential developments in data protection, pay transparency and much more are on the horizon.

To help you plan, in this article we look at some of the key developments that should be expected in the year ahead.

Extra bank holiday

There will be an additional bank holiday on 3 June 2022 to celebrate the Queen's Platinum Jubilee. It would be advisable for you to check what your policy says and, of course, whether there is a contractual right to the bank holiday as paid leave.

COVID-19

Following the mandatory vaccination for care home staff in 2021, mandatory vaccine regulations are expected to be passed for wider health and social care settings (unless an individual is exempt). It is expected that from 1 April 2022, all staff who work in health and social care settings (either in private practice or the NHS), must be fully vaccinated against COVID-19 to continue working.

Employment Bill

If passed by Parliament, the Bill will introduce changes to workers' rights and obligations. The Bill was announced in the Queen's Speech at the end of 2019, but delays due to COVID-19 have meant that each year since then its implementation has been pushed back. This year we may finally see movement. If we do, you can expect a raft of new employment laws, including the following:

- A single labour market enforcement agency to protect basic rights of vulnerable workers
- The right to request flexible working as a day one right unless an employer has a good reason
- Redundancy protection for pregnant employees and maternity returners by giving them priority for alternative employment opportunities; similar protections are expected for parents returning from adoption or shared parental leave
- Five days' unpaid leave each year for employees with caring responsibilities
- Twelve weeks' paid neonatal leave for employees whose baby is receiving care in a neonatal care unit
- A right to request a more predictable and stable contract for workers with variable hours after 26 weeks' service
- Regulations governing the fair and transparent distribution of tips and services charges among workers

Remote working

Aside from the provisions on remote working mentioned above in the (still awaited) Employment Bill, there is much that we could say on the topic. One global change that stood out for us as we entered 2022 was the move to remote working abroad. In the past year, we've had a lot of enquiries from you about the risks associated with employees moving abroad (Italy, France, Portugal, etc.) but retaining their current role. Our points of note? There are a myriad of additional claims and/or legal challenges with remote working abroad, whether this is a temporary or permanent arrangement. The businesses that plan in advance and undertake risk management at the outset will be best placed to meet these challenges.

Potential developments

Data Protection

On 28 October 2021 the Information Commissioners Office's consultation on data protection and employment practices closed. Much has changed since their previous guides were published and they are planning to replace existing guidance so that it better addresses recent changes in data protection law and reflect how employers use technology. We're expecting updated data protection and employment practices from the Information Commissioner's Office this year.

Gender pay gap reporting

In light of the effects of the COVID-19 pandemic the gender pay gap reporting deadlines for 2020 were extended. It is likely that deadlines will revert back to normal this year.

Ethnicity pay gap reporting

The Government has yet to respond to a consultation on mandatory ethnicity pay gap reporting. It appears, however, that in the absence of mandatory ethnicity pay gap reporting many employers are voluntarily publishing results.

Disability pay gap reporting

The Government is currently seeking views on the benefits of and barriers to disability workforce reporting. The key point of this consultation is to decide whether to make disability reporting mandatory for employers with 250 or more employees. The consultation runs until 25 March 2022. A response is expected to be published by 17 June 2022.

Confidentiality and non-disclosure agreements

In 2019 the Government published its proposals to prevent the misuse of confidentiality clauses or non-disclosure agreements (NDAs), reiterating that, while they can serve a legitimate purpose, the Government's intention would be to bring forward new legislation.

Sexual harassment in the workplace

The Government has proposed to introduce a new duty on employers to prevent sexual harassment in the workplace, make employers responsible if employees are harassed by third parties and extend the time limit for bringing claims under the Equality Act 2010 to the employment tribunal from three months to six months. We expect new legislation in 2022.

Whistleblowing review and new EU Directive

While technically the EU Whistleblowing Directive is not expected to be implemented in the UK, but it might influence whistleblowing practices, and we could potentially see a harmonised approach for multinational employers who have a global framework.

BEIS has also announced a review of whistleblowing legislation; however, the scope of the review has not yet been confirmed.

Post-termination non-compete clauses

The Government's consultation on proposed changes to non-compete covenants closed on 26 February 2021. The key points are whether changes should make non-compete clauses enforceable only when the employer pays part of the employee's salary during a non-compete period; and an alternative proposal to make post-termination, non-compete clauses in employment contracts unenforceable altogether.

The Government's response is awaited.

Extending ban on exclusivity clauses

The Government's response to extending the ban on exclusivity clauses in employment contracts to cover those earning under the Lower Earnings Limit is expected in 2022. This would effectively prevent employers from contractually restricting those employees from working for other employers.

Menopause

The House of Commons Women and Equalities Committee set up an inquiry into existing discrimination legislation and workplace practices around the menopause. The inquiry considered whether enough is being done to prevent women from leaving their jobs or suffering adverse consequences as a result of menopausal symptoms. The inquiry closed on 17 September 2021 and the recommendations are expected in 2022.

If you have any questions regarding the topics discussed in this article, please contact the London Employment Law team, **Jonathan Maude** at jmaude@vedderprice.com, **Daniel Stander** at dstander@vedderprice.com or **Rachel Easton** at reaston@vedderprice.com.

vedderprice.com