

A photograph of three business professionals (two men and one woman) sitting around a table in a modern office or meeting room at night. They are looking at laptops and talking. The room has large windows showing a city skyline at night. The lighting is warm and focused on the people.

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Public Sector Webinar

Employment Case Law and Legislation Update

Helen Snow

9 November 2023

Agenda

- Legislative developments over the past 6 months
- What's on the horizon
 - UK Government Consultation outcomes and draft legislation – hot off the press!
- Updated ICO guidance for employers
- Case law update

Legislation Updates

- Enhanced rights for **flexible working**
- New **protections for parents and carers**
- Enhanced rights for zero-hour workers
- Consultation on Working Time Regulations, TUPE and non-compete clauses



Employment Relations (Flexible Working) Act 2023

- ❖ Employees can now make **two flexible working requests** in a 12 month period
- ❖ Employees will **no longer have to explain the effect** of granting the request
- ❖ Employers cannot refuse a request unless the employee has been **properly consulted**
- ❖ Employers must deal with the request within **two months**



New protection for parents and carers



- ❖ The Neonatal Care (Leave and Pay) Act 2023

- ❖ Up to 12 weeks leave for parents whose children are admitted to neonatal care

- ❖ The Carer's Leave Act 2023

- ❖ A week of flexible unpaid leave for carers

- ❖ Protection from Redundancy (Pregnancy and Family Leave) Act 2023

- ❖ Extending existing redundancy protections for pregnant women and new parents

Workers (Predictable Terms and Conditions) Act 2023

- Overlap with flexible working requests
- Requirement for 26 Weeks' continuous service
- Unpredictable working pattern:
 - FTC less than 12 month;
 - Zero hour contract;
 - Other non-guaranteed hours arrangement
- Requests related to:
 - Hours worked;
 - Days worked; and/or
 - Length of contract.
- Two requests per year (inclusive of flexible working request)
- Statutory grounds for rejection (similar to flexible working requests)



Strikes (Minimum Service Levels) Act 2023

- Minimum services levels for strikes in “relevant services”
- Health, transport, education, fire and rescue, border control, and nuclear decommissioning and radioactive waste management services
- Employer “work notices”
- Loss of protections

Government Consultation Responses & Draft Statutory Instrument

- ❖ Published 8 November 2023
- ❖ Working Time Regulations 1998
- ❖ Transfer of Undertakings (Protection of Employment) Regulations 2006
- ❖ *Harpur Trust v Brazel* - holiday part-year and irregular hours workers
- ❖ [The Employment Rights \(Amendment, Revocation and Transitional Provision\) Regulations 2023](#)

Amendments to Working Time Regulations

- ❖ Allow rolled-up holiday pay
 - ❖ Irregular hours and part-year workers only
- ❖ Remove the record keeping requirements for working hours
- ❖ Maintain distinct 'pots' of annual leave and two existing rates of holiday pay
- ❖ Clarification on what must be included in normal remuneration for holiday pay



Amendments to TUPE



- ❖ Organisations with **fewer than 50 staff** will no longer be required to **inform and consult** appointed representatives
- ❖ Provided the **transfer affects fewer than 10** employees

Changes following *Harpur Trust v Brazel*

- Accrual method of 12.07% of hours worked in a pay period for irregular hours and part year workers from 1 January 2024
- Paid at a rate of 12.07% of pay in a pay period
- Widely used before the *Harpur Trust v Brazel* decision

Restatement of EU Case Law

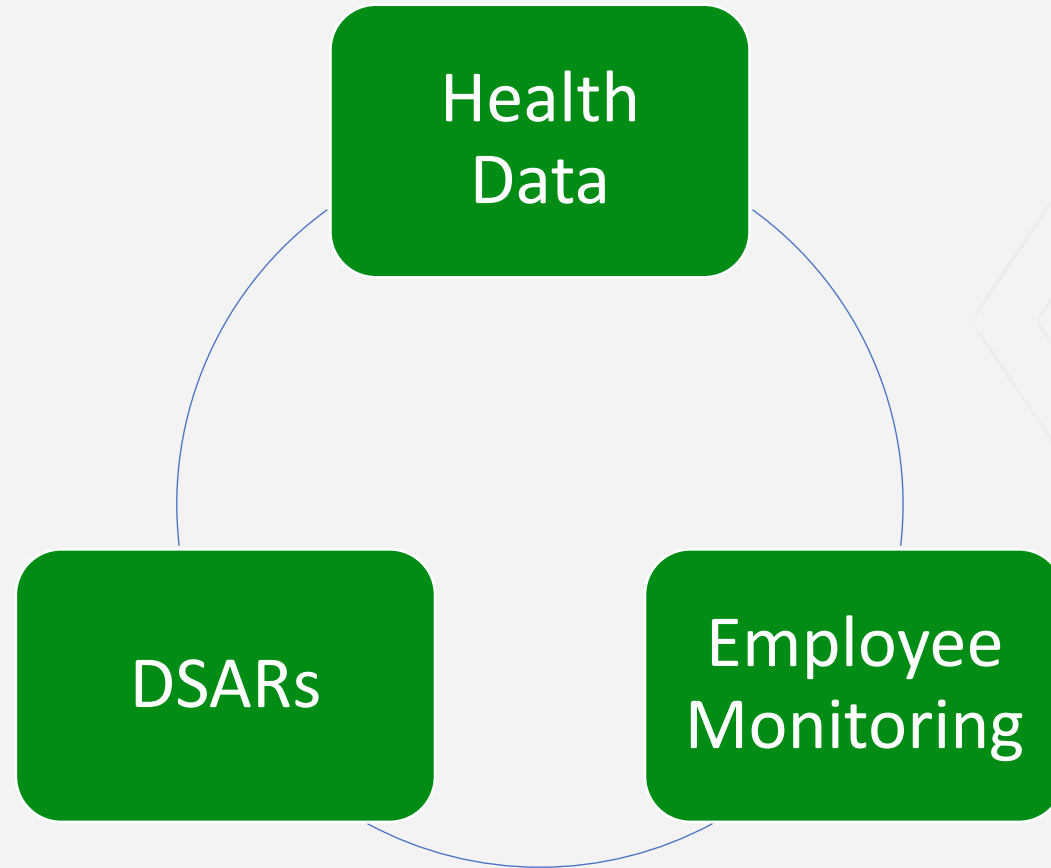
- Retain worker protection and entitlement
- Carry over of annual leave
- Accrual of annual leave for irregular hours and part-year workers when they have had other period of leave

Consultation on Non-Compete Clauses

- ❖ Response to 2020 consultation
- ❖ Government intends to limit the length of non-compete clauses to 3 months
- ❖ The potential to give 5 million UK workers more flexibility



ICO Guidance





Case law update

Chief Constable of the Police Service of Northern Ireland v Agnew

- Underpayments of holiday pay
- Gap of more than 3 month does not automatically break a series of deductions
- Unlawful deductions from wages claims
- Paid basic pay only while on period of annual leave
- Overtime and allowances not taken into account
- Arrears of holiday pay to November 1998

Chief Constable of the Police Service of Northern Ireland v Agnew

- Gap of 3 months or more broke the “series of deductions”
- Supreme court – a series of deductions a question of fact
- Contiguous sequence of deductions is not required if each unlawful payment is linked by a common issue
- Two-year backstop - Deduction from Wages (Limitation) Regulations 2014

Borg-Neal v Lloyds Banking Group PLC 2202667/2022 (ET)



Long standing employee

Remote training session “Race Education for Line Managers”

Use of racially discriminatory language in the context of a question to the trainer

Trainer reported the use of the language

Dismissed for gross misconduct

Borg-Neal v Lloyds Banking Group 2202667/2022 (ET)



Upheld unfair dismissal and disability discrimination

Dismissal was not within the band of reasonable responses in the circumstances

Dismissal was discrimination arising from disability

Unable to properly express what he was thinking due to dyslexia

Legitimate aim – furthering its anti-racist education programme

Not a proportionate means of achieving that aim.

AECOM Ltd v Mallon [2023] EAT 104



Previously employed, had dyspraxia

Applied for a new role in R&D Team

Online application form

Emailed HR with CV, info on dyspraxia
and requested oral application

Failure to make reasonable
adjustments

AECOM Ltd v Mallon [2023] EAT 104

- Two-part PCP
 - Create an account
 - Completing an online application
- Substantial disadvantage
- Could and should have telephoned him to establish the nature of his difficulties



Connor v Chief Constable of the South Yorkshire Police [2023] EAT 42



C dismissed after long term sick leave



Payment in lieu of accrued holiday

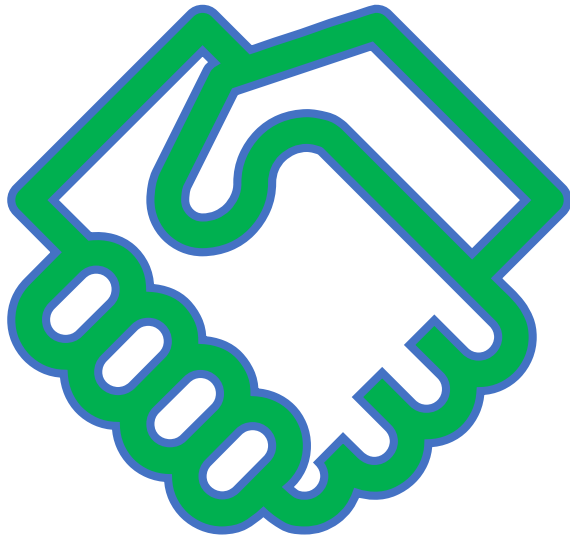


Contract stipulated an accrual rate of $1/365^{\text{th}}$ of annual salary



Tribunal decided that it was correct as it was based on the 'relevant agreement'

Connor v Chief Constable of the South Yorkshire Police [2023] EAT 42



- On appeal, it was decided that C was underpaid
- A 'relevant agreement' (the contract) can change the approach to accrued holiday BUT the individual must not receive less than they would have done had they have worked that period
- Full time employees: 1260th?

Upcoming Webinars

- **Procurement Update** - Thursday 7th December 2023 @10am
- **Introduction to Welsh Local Government Law & Governance** - Thursday 11th January 2024 @10am
- **Trustee Training for Councillors** - Thursday 8th February 2024 @10am
- **Insolvency – Tenant Default and Termination** - Thursday 14th March 2024 @10am
- **S106 For beginners** - Thursday 11th April 2023 @10am

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Thank You

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