

SAS DANIELS – OCTOBER 2024

Employment Seminar

Labour Reform – The Employment Rights Bill

Unfair Dismissal

- Unfair dismissal to become a Day 1 right, subject to statutory probationary period.
- Current 2 years qualifying period to be repealed.
- To be unlawful to dismiss pregnant employees and those returning from maternity leave within 6 months of their return to work except in special circumstances.

Probationary Period

- Government will consult on introduction of statutory probationary period for new employees - preference is for a 9-month period.
- Short service dismissals for conduct, capability, SOSR and statutory restriction still potentially possible during probationary period.
- Redundancy is excluded – Fair decision and process will be required.

Probationary Period

- Government suggestion for dismissal during probationary period - holding a meeting with employee to explain concerns (with right of accompaniment).
- Also confirmed it will consult extensively, including how the statutory probationary period will interact with Acas Code of Practice.
- Consultation on compensation regime for successful claims during probationary period – consideration being given to tribunals not being able to award the full compensatory damages available.
- To mitigate rise in claims, provision of signpost and support for employees to make it clear where bringing claims may or may not be successful.

Fire and Rehire

- Restricts an employer's ability to "fire and rehire" (Dismissal and re-engagement).
- Exception – if employer can provide evidence of financial difficulties and show that the need to make the change was not reasonable avoidable.
- Consultation on lifting the cap of protective award if employer has not properly followed collective redundancy process.

Zero-hours and “low hours” contracts

- Introducing a right to a guaranteed hours contract that reflects the hours eligible workers regularly work over a reference period.
- Entitlement to a reasonable notice of any changes to their working hours and compensation if a shift is cancelled or ended early.
- Employer will be obliged to offer a guaranteed contract after reference period, worker is not obliged to accept it.
- Consultation on definition of “low hours” and how subsequent review periods should work.

Sexual Harassment and Third Party Harassment

- Currently - new section 40A of the Equality Act - 26 October 2024.
- Bill has amended this further.

Statutory Sick Pay

- Currently, SSP available from Day 4 sickness absence.
- To made available from Day 1 sickness absence.
- Lower earnings limit of £123 per week to be removed.
- Lower level of sick pay for lower earners – consultation on percentage replacement rate for those earning below flat rate of SSP.

Paternity Leave

- Will become a Day 1 right, instead of requiring 26 weeks' continuous service.

Parental Leave

- Will become a Day 1 right, instead of requiring 1 year's continuous service.

Bereavement Leave

- Currently no right to paid or unpaid bereavement leave.
- Proposal - Unpaid leave for bereavement – Day 1 right.
- Parental bereavement provisions in Employment Rights Act to be replaced.
- Applying to the loss of a wider group of persons – to be specified in future regulations.

Flexible Working

- Can only refuse a request where *it is reasonable to do so* in relation to one of the 8 statutory reasons.

Collective Redundancies

- Threshold will apply across a business rather than at one establishment.

Equality Act Plans

- Employers with 250+ employees
- Requirement to develop and publish equality action plans relating to:
 - Gender equality
 - Addressing the gender pay gap
 - Dealing with supporting employees through the menopause.

Trade Unions

- Employers required to give workers a written statement advising that they have the right to join a trade union.
- Access Agreements – allowing trade unions the right of access to workplaces.

Office of Equality and Opportunity

- To oversee equality policy and legislation in UK, replacing the Equality Hub.
- Priorities to include:
 - Strengthen the legal duty for employers to create and maintain working conditions free from harassment;
 - Enshrining in law the full right to equal pay for ethnic minorities and disabled people
 - Delivering a full trans-inclusive ban on conversion practices
 - Championing the rights of disabled people
 - Focusing on socio-economic disparities

Next steps to make work pay

- Paper sets out next steps of the Government following publication of the Bill.
- Reforms will continue to be delivered in partnership with businesses, workers and trade unions.
- Confirms that further detail will be provided through regulations and codes of practice.
- Will begin consulting on the reforms in 2025.
- Anticipated that majority of reforms will take effect no earlier than 2026.
- Unfair dismissal reform no earlier than Autumn 2026.

Wider reforms outside of Bill

- Paid travel time.
- Right to switch off – through a statutory Code of Practice.
- Remove NMW age bands to ensure every adult worker benefits from a genuine living wage.
- Developing menopause guidance for employers and guidance on health and wellbeing.

Equality (Race & Disability) Bill

- Consultation to begin “in due course”.
- Draft Bill to be published during the current parliamentary session. The Bill is to include:
 - Extend pay gap reporting to ethnicity and disability for employers with more than 250 staff.
 - Extend equal pay rights to protect workers suffering discrimination on the basis of race or disability.
 - Ensure that outsourcing of service can no longer be used by employers to avoid paying equal pay.
 - Implement a regulatory and enforcement unit for equal pay with involvement from trade unions.

Longer-terms reforms

- Review of parental leave.
- Review of carer's leave.
- Consultation on workplace surveillance technologies.
- Consultation on moving towards a single worker status, including exploring how to enhance protections for self employed workers.
- Holistically examine a “wide variety of issues” relating to TUPE and process.
- Modernising H&S legislation and guidance, including neurodiversity awareness in the workplace, extreme temperatures and long Covid.
- Consulting with Acas on enabling employees to collectively raise grievances about conduct at work.

Any questions?

Changes to Sexual Harassment Legislation

Section 40A of the Equality Act 2010

- Due to come into effect on 26 October 2024.
- Aims to increase protection for employees and expand employers' responsibilities to prevent harassment in the workplace.
- Aims to create a safer working environment and to improve workplace cultures.
- Raised awareness following #MeToo movement.

What are the changes?

- Imposes a proactive duty on the employer to take reasonable steps to prevent sexual harassment within the workplace.
- Employers are not only liable when harassment has occurred – employers are now also responsible for preventing it within the workplace as a whole.
- Employers must implement comprehensive measures for prevention. This could include having effective policies in place, training managers and ensuring employees know how to report concerns and to whom.
- A single incident can now be enough for employers to be liable – there is no longer a requirement for harassment to have occurred more than once.

What is the impact and what do we need to do?

The law does not list specific steps an employer needs to take to be considered 'reasonable'. However, the following practical steps are examples of action you can take to ensure you do not fall foul of the new regulations:

- Communicate with staff to make it clear that sexual harassment will not be tolerated and is unlawful – zero-tolerance stance.
- Make staff aware that if they do not comply, it may lead to disciplinary action.
- Make sure staff know the reporting procedures.
- Act quickly to investigate and address the issue.
- Have effective policies in place, conduct regular reviews of those policies and update where required.
- Providing staff training – in particular, managers and line managers, so they know how to deal with and respond to any complaints. Make sure complaints are investigated thoroughly.

What is the impact and what do we need to do?

An example of how this may operate in practice:

- An employee makes a sexual harassment complaint, stating that a colleague sexually harassed her. The employer fails to address or deal with this and has not put any mechanisms in place to prevent this behaviour from its employees. The employer could be liable for both the harassment **and** the failure to prevent it.

Non-Compliance

- If an employer fails to comply, they could face financial penalties such as compensation at Tribunal, or even punitive damages if there has been a serious failure.
- Employment Tribunals will also be able to uplift discrimination compensation by up to 25% where an employer is in breach of the new duty to prevent harassment.
- The purpose of this is to incentivise employers to take proactive measures for prevention.
- The EHRC has the power to take enforcement action for breaches of the EqA.

Will the new Labour reforms make any additional changes?

- There is the potential for the re-introduction of '*all*' reasonable steps to prevent harassment.
- This would go a step further than the regulations due to come into effect on 26 October, by requiring employers to take '*all reasonable steps*' rather than just '*reasonable steps*'. However, we currently have no information in terms of what this would require in practice and how much further employers will need to go.
- Introduction of third-party harassment.

Third Party Harassment

- This was originally included within the Bill but was later removed by the House of Lords. It therefore will **not** be coming into effect on 26 October but has been included within the Employment Rights Bill.
- Preventative steps may include putting reporting mechanisms in place or assessing high-risk workplaces/sites/situations where staff might be alone with customers or other third-party individuals.

Any questions?

Crime and Punishment

Crime and Punishment

- What employers can and can't do if an employee is arrested and/ or convicted of a crime.
- Initial thoughts?
- Arrest vs conviction.
- Don't rush into taking action.

Crime and Punishment

- Driving offences
 - Link to employee's role?
 - Reasonable steps an employer can take – investigate
 - Consider alternatives like redeployment into another role, or sending out in teams etc
 - Suspension – not a neutral act!
 - Consider formal disciplinary action

Crime and Punishment

- More Serious Crimes
 - Consider whether the crime affects ability to perform job
 - workplace reputation
- Impact of colleagues
 - News travels fast
 - Not a fair reason to take action – but can be a factor
 - Still have to maintain and protect employee's confidentiality
 - Adverse media

Crime and Punishment

- Dismissal for conduct or SOSR may be potential outcome
 - Link to work? Often SOSR is more common – but proper investigation will determine this
- Proper process needs to be followed – don't just react
 - What does the process look like?
 - Consider suspension
- Police involvement
- Different burden of proof

Crime and Punishment

Suspension & Pay

- Suspension is usually with full pay.
- As discussed, not a neutral act, but may be reasonable in the circumstance.
- Nature of crime and employee's particular job role – who might they come into contact with? Etc.
- Claiming back pay during suspension.
- Misconceptions in the media – “who” would be a good example here?

Crime and Punishment

Social Media

- Hate speech – more common now with recent events around the world.
- Balancing act.
- Posting harmful, offensive, or discriminatory views may violate company policies.
- Could lead to disciplinary action, including dismissal.
- Ensure social media policy is clear and communicated to staff.

Crime and Punishment

- Conduct fair investigations and follow procedures.
- Keep clear, written records of all actions and decisions.
- Seek legal advice for complex situations!



Any questions?

Dealing with Employee Absence

Typical forms of absence

- These are those governed by legislation and impose certain requirements on employers. They include:
 - Annual Leave
 - Sickness
 - Maternity/Paternity Leave
 - Shared Parental Leave
 - Dependents Leave
 - Parental Bereavement Leave
 - Carers Leave

Sickness absence – short term

- Regular communication during an employee's sickness absence is crucial.
- Ensure that all employees are aware of absence reporting procedure.
- If line managers are point of contact, ensure they are aware of what information to obtain from staff.
- Return to work meeting after each and every absence.

Sickness absence – short term

- Content of **phone call with employee**:
 - Reason for absence - Don't just record it as "Sick" !!!
 - Potential length of absence / likely date of return
 - Requirement for employee to call in again
 - Remind of requirement to provide a sick note if illness exceeds 7 days
- Keep records of any conversation.

Sickness absence – short term

- Content of **return to work meeting**:
 - Go through reason for absence
 - Check employee is actually fit to return
 - Check if any underlying issue (If any repeat illnesses)
 - Discuss previous absence if relevant, i.e. if high levels
- Keep records of any conversation.

Sickness absence – short term

- Ensure that Sickness Absence Policy sets out absence triggers.
- If employee hits trigger, ensure this is dealt with.
- Warnings for absence should be separate from conduct or capability.
- Start with informal action and proceed up through levels of warnings (as per disciplinary policy).
- Keep an eye out for underlying health issues as could be a disability.

Atypical absence

- Other periods of leave/absence that are not governed by statute, such as:
 - Unauthorised absence
 - Unpaid leave
 - Time off for medical/dental appointments
 - Compassionate/bereavement leave

Unauthorised absence

- Employee fails to attend work, or leaves work, without prior approval.
 - Sickness absence
 - Issues at home
 - Arguments with manager or colleagues
- Unauthorised absence is considered misconduct.

Unauthorised absence

- Establish clear policies
 - Procedures for reporting absences
 - Consequences of not following correct procedures
- Monitor absence regularly
- Initial contact with the employee
 - Contact them as soon as possible (by telephone, email etc)
- Return to work meeting (investigation meeting)
 - Obtain information as to reason for absence and reason for failure to call in – decisions can then be made as to next steps depending on circumstances.

Unpaid leave

- No entitlement – entirely at the employer's discretion.
- Handle requests in a fair and consistent manner, balancing needs of employee with business requirements.
- If agreed, employer should confirm in writing exactly what has been agreed.
- Ensure no crossover with statutory leave i.e. dependents leave or parental leave.

Unpaid leave

- If leave is approved, ensure details of what has been agreed is put in writing to the employee.
- If leave is not approved, explain reasons clearly and explore other possible solutions with employee.
- Encourage employees to plan ahead, to assist with managing workloads.

Time off for medical/dental appointments

- Decide whether to offer paid or unpaid time off and be consistent in its application.
- Provide flexibility, when possible, especially for employees with ongoing health needs.
- Ensure compliance with statutory requirements:
 - time off for antenatal appointments
 - reasonable adjustments under the Equality Act

Time off for medical/dental appointments

- Ensure a clear policy setting out procedure for requesting time off:
 - How to notify manager, e.g. as soon as possible or a specific number of days in advance
 - Whether time off will be paid, unpaid, or if employees are expected to make up time later – no entitlement to paid leave (except for pregnancy related appointments)
 - Whether employees are expected to schedule appointments outside of working hours whenever possible
 - Whether employees are expected to provide evidence of any appointment.

Compassionate/Bereavement Leave

- Ensure a clear policy setting out procedure for requesting time off:
 - The duration and conditions for such leave and whether leave is paid or unpaid
 - Definition of “immediate family” (spouse, child, parent or sibling)
 - Outline any provisions for extended family or other significant relationships if needed
 - Explain that employee may be able to use annual leave or unpaid leave

Compassionate/Bereavement Leave

- Be aware of Statutory Parental Bereavement Leave
 - For the loss of a child under the age of 18 or a stillbirth after 24 weeks of pregnancy
 - Entitlement of up to 2 weeks of leave within 56 weeks of bereavement
 - Entitlement to Statutory Parental Bereavement Leave Pay (must have 26 weeks' continuous service and earnings above lower earnings limit)

Compassionate/Bereavement Leave

- Encourage open communication with employees in these situations.
- Managers should:
 - Express sympathy and offer support
 - Discuss the employee's needs sensitively, considering their emotional state
 - Be flexible where possible, especially where employee needs additional time off
- Ensure flexibility for additional or long-term support (if employee is responsible for organising funeral or managing an estate).
- If employee suffering with severe grief or mental health, consider a phased return to work or adjustments under their sickness absence policy.

Any questions?

Understanding your needs.

Protecting your interests.

Thank you for your time.

Understanding your needs. Protecting your interests.

Stockport | Chester | Macclesfield | Congleton

SAS Daniels LLP is a limited liability partnership in England & Wales with number OC333138.
A list of members is available at our registered office, 30 Greek Street, Stockport, Cheshire SK3 8AD.
SAS Daniels LLP is authorised and regulated by the Solicitors Regulation Authority.

sas daniels 
SOLICITORS