



2021 UK Employment Law Round-Up and Look Ahead to 2022

Looking back: Are you up to speed with these 2021 UK employment law developments?

COVID-19 COMPLIANCE

 Furlough scheme ended on 30 September 2021	<ul style="list-style-type: none"> Employers with employees returning from furlough leave should make sure that any changes to employees' contracts were consented to and properly documented. If considering redundancies, employers must follow a fair process and comply with their employee consultation obligations.
 Managing a return to the workplace	<ul style="list-style-type: none"> Employers have a duty to ensure the health and safety of their workforce, including completing a COVID-19 risk assessment to mitigate risks. Any measures put in place (e.g., in relation to mask-wearing) must not discriminate. Employers collecting data in relation to their employees' COVID-19 infection or vaccination status must comply with the UK GDPR and consider employment law implications, including discrimination risks.
 Employee vaccination	<ul style="list-style-type: none"> There is no COVID-19 vaccination requirement for private sector employees, save for employees working in certain care home settings.

WORKING FROM HOME

 Mandatory office-based working	<ul style="list-style-type: none"> An Employment Tribunal found that requiring a role to be office-based amounted to indirect associative disability discrimination against an employee caring for her disabled mother (<i>Follows v Nationwide Building Society ET/2201937/18</i>). This decision is not binding but may be indicative of the kind of challenges employers could face when seeking to mandate a return to office.
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MENOPAUSE IN THE WORKPLACE

 Discrimination	<ul style="list-style-type: none"> Recent case law has highlighted that a failure to support employees with menopausal symptoms could lead to age, sex and/or disability discrimination claims under the Equality Act 2010 (<i>Rooney v Leicester City Council EA-2020-000070 DA</i>). The UK government has outlined various steps it intends to take to tackle menopause issues in the workplace including creating a supportive environment and offering flexible working options.
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REPORTING OBLIGATIONS

 Gender pay gap reporting	<ul style="list-style-type: none"> Following an extension due to the COVID-19 pandemic, the deadline for companies with 250 or more employees to report their gender pay gap was 5 October 2021.
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Looking ahead: What to watch out for in 2022 and beyond?

SEXUAL HARASSMENT



New employer duty and employer toolkit

- The UK government has confirmed its intention to introduce a new duty on employers to prevent sexual harassment and third-party harassment in the workplace. There is currently no set date for the draft legislation to be published.
- A new Fawcett Society report makes recommendations for employers to tackle sexual harassment. This will form the basis of an employer toolkit, to be published in January 2022.

REPORTING OBLIGATIONS



Gender pay gap reporting

- Deadlines are expected to revert to normal timescale. For private sector employees, the deadline is expected to be 4 April 2022.



Ethnicity pay gap reporting

- The Chartered Institute of Personnel and Development (CIPD) has called on the UK government to bring in mandatory ethnicity pay gap reporting by 2023.

FLEXIBLE WORKING



Making flexible working the default position

- In September 2021, the UK government published a proposal to allow all employees to request flexible working from day one, removing the current requirement for 26 weeks' service, as well as limiting the reasons employers can refuse a flexible working request.

CARER'S LEAVE



New right to carer's leave

- In September 2021, the UK government confirmed its plan to legislate to give employees carer's leave as a day one right.
- The leave will consist of up to five working days of unpaid leave per year for employees with long-term caring responsibilities.

POSSIBLE LEGISLATIVE CHANGES



Post-termination non-compete clauses

- The UK government's 2021 consultation on reforming post-termination non-compete restrictions in employment considered whether the use of such restrictions should be limited, for example by requiring employers to pay employees compensation for the duration of the restrictions. To date, no decision has been made and the timeframe for any reforms is unclear, but change may be on the horizon.



New Employment Bill

- It is anticipated that a new Employment Bill, initially announced in December 2019, will be published in 2022.
- Expected measures include, among others, the introduction of statutory neonatal leave and pay for parents of babies requiring neonatal care, and the extension of the redundancy protection period for employees on maternity leave to up to six months after they return to work. It may also include some of the other proposed changes mentioned above.

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