



# 2022 UK Employment Law Round-Up and Look Ahead to 2023

## Looking back: Are you up to speed with these 2022 UK employment law developments?

### COVID-19

	<b>Managing the return to the workplace</b>	<ul style="list-style-type: none"> <li>On 1 April 2022, the UK government removed all remaining COVID-19 restrictions relating to the workplace.</li> <li>Employers should continue to comply with their overarching obligations relating to health and safety.</li> </ul>
	<b>Employee vaccinations</b>	<ul style="list-style-type: none"> <li>On 15 March 2022, the UK government removed vaccination requirements for all employees, including health and social care workers.</li> <li>Requiring employees to obtain a COVID-19 vaccination now carries an increased risk of claims, including for discrimination.</li> </ul>
	<b>Long COVID implications</b>	<ul style="list-style-type: none"> <li>An Employment Tribunal found that long COVID qualified as a disability under the Equality Act 2010 (<i>Burke v Turning Point Scotland</i> [2022] SLT 33). While this decision is not binding, it may be indicative of the direction that higher courts will take on this issue.</li> </ul>

### EMPLOYMENT STATUS

	<b>Employment status consultation</b>	<ul style="list-style-type: none"> <li>In July 2022, the UK government published its long-awaited response to the employment status consultation launched in 2018.</li> <li>While acknowledging that the existing framework is complex, the UK government decided that 'now is not the right time' for reform and that caselaw (including the Supreme Court's 2021 decision in <i>Uber and others v Aslam and others</i>) currently provides sufficient clarity on the approach to take when determining employment status.</li> </ul>
	<b>New guidance</b>	<ul style="list-style-type: none"> <li>In July 2022, the UK government published detailed new guidance entitled 'Employment Status and Employment Rights', which includes a checklist to assist employers in assessing an individual's employment status.</li> </ul>

### REPORTING OBLIGATIONS



	<b>Ethnicity pay gap reporting</b>	<ul style="list-style-type: none"> <li>Despite an earlier consultation on the topic, the UK government confirmed in March 2022 that mandatory ethnicity pay gap reporting will not be introduced at present.</li> <li>Employers may however choose to report on their ethnicity pay gap voluntarily. The CIPD has issued guidance on this.</li> </ul>
	<b>Disability workforce reporting</b>	<ul style="list-style-type: none"> <li>The UK government's consultation on disability workforce reporting for employers with 250 or more employees closed in April 2022.</li> <li>Although the UK government committed to publishing its response by 17 June 2022, its response is still awaited.</li> </ul>

### MENOPAUSE IN THE WORKPLACE




	<b>Discrimination</b>	<ul style="list-style-type: none"> <li>The UK government confirmed that no changes will be made to the Equality Act 2010 to make menopause a protected characteristic in its own right, because it believes the protected characteristics of sex, age and disability can provide protection against unfair treatment of employees going through the menopause.</li> </ul>
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# Looking ahead: What to watch out for in 2023 and beyond?


## POTENTIALLY FAR-REACHING LEGISLATIVE CHANGES

 <p><b>Retained EU law</b></p>	<ul style="list-style-type: none"> <li>In September 2022, the UK government published the Retained EU Law (Revocation and Reform) Bill, which envisions the 'sunsetting' of EU-derived UK legislation. This means that, if passed, the UK government will have to take positive action if it wishes to retain many EU-derived existing employment protections beyond 31 December 2023, including the Working Time Regulations 1998, Equality Act 2010 and TUPE 2006.</li> <li>Although the Bill has potentially far-reaching implications for UK employment law, it is not yet known what legislation the UK government will choose to preserve, repeal or replace.</li> </ul>
 <p><b>New Employment Bill</b></p>	<ul style="list-style-type: none"> <li>There remains no timeframe for the introduction of the long-awaited Employment Bill, initially announced in 2019.</li> <li>Expected measures include, amongst others, the right for workers to request a more predictable and stable contract, the right to one week carer's leave as a 'day one' right and the introduction of a single enforcement body to help workers enforce their rights.</li> <li>In the meantime, various Private Members' bills mentioned below have been introduced that, if passed, would cover some of the original ground the Employment Bill was intended to cover.</li> </ul>

## FAMILY RIGHTS

 <p><b>Flexible working</b></p>	<ul style="list-style-type: none"> <li>In December 2022, the UK government published its response to its consultation on updating flexible working laws which confirmed that the right to request flexible working will become a 'day one' right, employees will be allowed to make two requests within a 12-month period and there will be a new duty on employers to discuss alternatives to the request.</li> <li>While there is no timetable for the new legislation, the UK government is supporting the Private Members' Employment Relations (Flexible Working) Bill currently making its way through Parliament that covers some of the proposed changes.</li> </ul>
 <p><b>New right to neonatal care</b></p>	<ul style="list-style-type: none"> <li>A Private Members' Neonatal Care (Leave and Pay) Bill, which has the UK government's backing, is currently making its way through Parliament.</li> <li>If passed, it would allow parents of babies requiring neonatal care to take up to 12 weeks of paid leave as a 'day one' right. This leave would be in addition to other leave entitlements such as maternity and paternity leave.</li> </ul>
 <p><b>Protection for redundancy</b></p>	<ul style="list-style-type: none"> <li>A Private Members' Protection from Redundancy (Pregnancy and Family Leave) Bill also has the UK government's backing and is also making its way through Parliament.</li> <li>If passed, it would extend the existing redundancy protections to an expanded period from when a woman tells her employer she is pregnant until 18 months after the birth, meaning a mother returning from a year's maternity leave would receive an additional 6 months of redundancy protection.</li> </ul>
 <p><b>IVF rights</b></p>	<ul style="list-style-type: none"> <li>A Private Members' Fertility Treatment (Employment Rights) Bill is also making its way through Parliament.</li> <li>If passed, it would give employees going through IVF treatment and their partners the right to take time off to attend fertility clinic appointments just as they are entitled to for antenatal appointments. Employees undergoing IVF treatment would also be protected from discrimination, in the same way as pregnant employees.</li> </ul>
<p><b>There is no guarantee that any of the above bills to introduce new family rights will be passed in 2023.</b></p>	

## FIRE AND REHIRE

 <p><b>The 'fire and rehire' practice under scrutiny</b></p>	<ul style="list-style-type: none"> <li>In response to the 2022 P&amp;O scandal where P&amp;O dismissed almost 800 employees as part of a 'fire and rehire' exercise, the UK government announced its intention to introduce a new statutory code on the practice of 'fire and rehire'.</li> <li>The code will include practical steps for employers to follow when proposing changes to employment terms. Employment tribunals and courts will be required to take it into account when considering relevant cases, including unfair dismissal, and will have the power to apply an uplift of 25% of an employee's compensation where the employer unreasonably failed to follow the code.</li> </ul>
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