



Navigating Employment Law: Recent and forthcoming changes employers need to know

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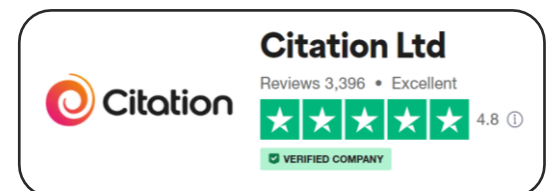
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About today



Latest updates in
Employment Law
(GB only)



What's on
the horizon for
2024 and how
to get prepared



Flexible Working (Amendment) Regulations 2023

- Due to come into force on **6 April 2024**.
- Make the right to request flexible working a **day one right** - remove the requirement that employees need 26-weeks qualifying service





Employment Relations (Flexible Working) Act 2023

- Allows employees to make 2 flexible working requests in any 12-month period (currently limited to 1 request).
- Reduces employers' time limit to respond from 3 months to 2 months.
- Removes requirement for employees to set out how the effects of their request might be dealt with by their employer.
- Requires employers to consult with their employees, as a means of exploring the available options, before rejecting a flexible working request.

No change to 8 grounds for refusal



Flexible Working Requests

- General push to make it easier to make a flexible working request.
- This process can be a useful engagement tool - e.g. could prevent a resignation or encourage recruitment.
- Since pandemic, some industries have moved much more to hybrid working - but of course, depends on the industry.
- Might be possible to do more at home - e.g. paperwork. Again, depends on the role.



Flexible Working

Doesn't just have to be about location. Could consider:

- Shorter hours
- Later finish/earlier start
- Condensed hours
- Part-year hours (e.g. term-time only hours)
- Variable hours
- Change of duties





The Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023

- Mainly about holiday rules, including introducing the right to pay rolled-up holiday pay for some workers.
- Apply to England, Scotland and Wales (Northern Ireland will have to enact separately).



New rules on holiday accrual and pay

- New rules apply to workers (including employees) who work **irregular** hours or **part-year**.
- Rules will come into force for holiday years starting from **1 April 2024** onwards e.g. new rules will apply to Jan- December holidays years from **1 January 2025**.





Current rules on holiday

- All workers/employees are entitled to 5.6 weeks holiday and when calculating a week's entitlement, you must ignore weeks when they are not working.
- The Supreme Court decision in **Brazel v Harpur Trust** made it clear that calculating their holiday entitlement on the basis of 12.07% of the hours worked is not correct.
- Not supposed to pay rolled-up holiday. Calculate holiday ignoring any weeks where don't work.





Irregular and part-year workers

- **Irregular worker** - someone whose working hours in each pay period during that holiday year is "wholly or mostly variable".
- **Part-year workers** - someone who is only required to work part of the holiday year (at least a week where they are not required to work and are not paid).





Holiday accrual for irregular and part-year workers

- For holiday years starting on or after 1 April 2024, holiday entitlement will accrue at the rate of 12.07% of the hours worked during that pay period.
- Where the accrual includes a fraction of an hour, this will be rounded down if it is less than 30 minutes and rounded up if more than 30 minutes.
- Leave will continue to accrue when they are on sick and statutory family leave (based on average hours worked over the previous 52 weeks).
- This will have the effect of accruing less than 5.6 weeks holiday if they don't work every week.



Scenario

Meet Jackie

Jackie is a bank nursery assistant on a zero hours employment contract.

Covers sickness and holiday absence.

In 2023, she has worked during 35 weeks and on average worked 20 hours each week with average earnings of £200 per week.

Under current rules, you should ignore the weeks she is not working and she would be entitled to 5.6 weeks at £200 per week = total holiday pay of £1,120.

Under the new rules

The new rules mean she would be entitled to **12.07%** of total hours worked

(35 x 20 = 700 hours)

12.07% of 700 hours = 84.49 hours (84 hours)

84 hours based on average earnings = £840.



Rolled-up holiday pay

- Employers can choose to pay rolled-up holiday pay to irregular hours and part-year workers (for holiday years starting 1 April 2024). Consult if existing staff.
- This must be paid at the rate of at least 12.07% of all pay for the work done - percentage would increase if get more than 5.6 weeks holiday a year.
- It must be itemised clearly on the payslip and paid each pay period.
- Rolled-up holiday payments (calculated at an average) will continue to be paid while the worker is on sick leave or statutory family leave.
- Employee must still take their holiday - Health & Safety considerations.



Restatement of key EU caselaw - holiday pay

- Retention of the two-tier approach to pay for statutory minimum holidays:
 - 4 weeks 'EU' holiday at 'normal' pay
 - 1.6 weeks additional UK holiday at 'basic' pay
- 4 weeks holiday pay should include average commission, regular overtime, professional allowances etc. i.e. payments intrinsically linked to the performance of the role





Restatement of key EU caselaw - carry over of holidays in 3 situations

- The full 5.6 weeks can be carried over to next holiday year if not taken holiday because of statutory leave - e.g. maternity leave.
- The 4 week 'EU' entitlement can be carried over if been unable to take holiday because of sick leave (but must be taken by end of 18 months from the end of the leave year in which the entitlement originally arose).
- The 4 week entitlement can be carried over:
 - where the employers fails to recognise the worker's right to annual leave or pay for that leave or
 - fails to tell the worker that any leave not taken in that year will be lost



Ending of COVID carryover

The regulations also bring an end to COVID carry over of holidays rules and any leave already carried over will have to be used up **by 31 March 2024.**





How to prepare for the new rules

- Review current contracts, handbook and policies.
- Review your current practices regarding the calculation of holiday pay - e.g. regular overtime included?
- If you have irregular hours/ part year workers - do you want to introduce rolled-up holiday pay / 12.07% accrual?
- If so, consider the Health & Safety implications and put measures around this
- Consider your practices on managing outstanding holiday entitlement



Paternity Leave (Amendment) Regulations 2024

Due to come into force on **8 March 2024** for babies due from **6 April 2024**. Under these new Regulations, employee can:

- split their paternity leave into 2 blocks of 1 week (current entitlement is 1 week or 2 consecutive weeks' leave);
- take their paternity leave and pay at any point in the first year after the birth or adoption of their child (currently must be taken within the first 8 weeks); and
- adjust the way give notice of leave and pay - confirm intend to take leave 15th week before birth, and then 28 days' notice for period of leave.



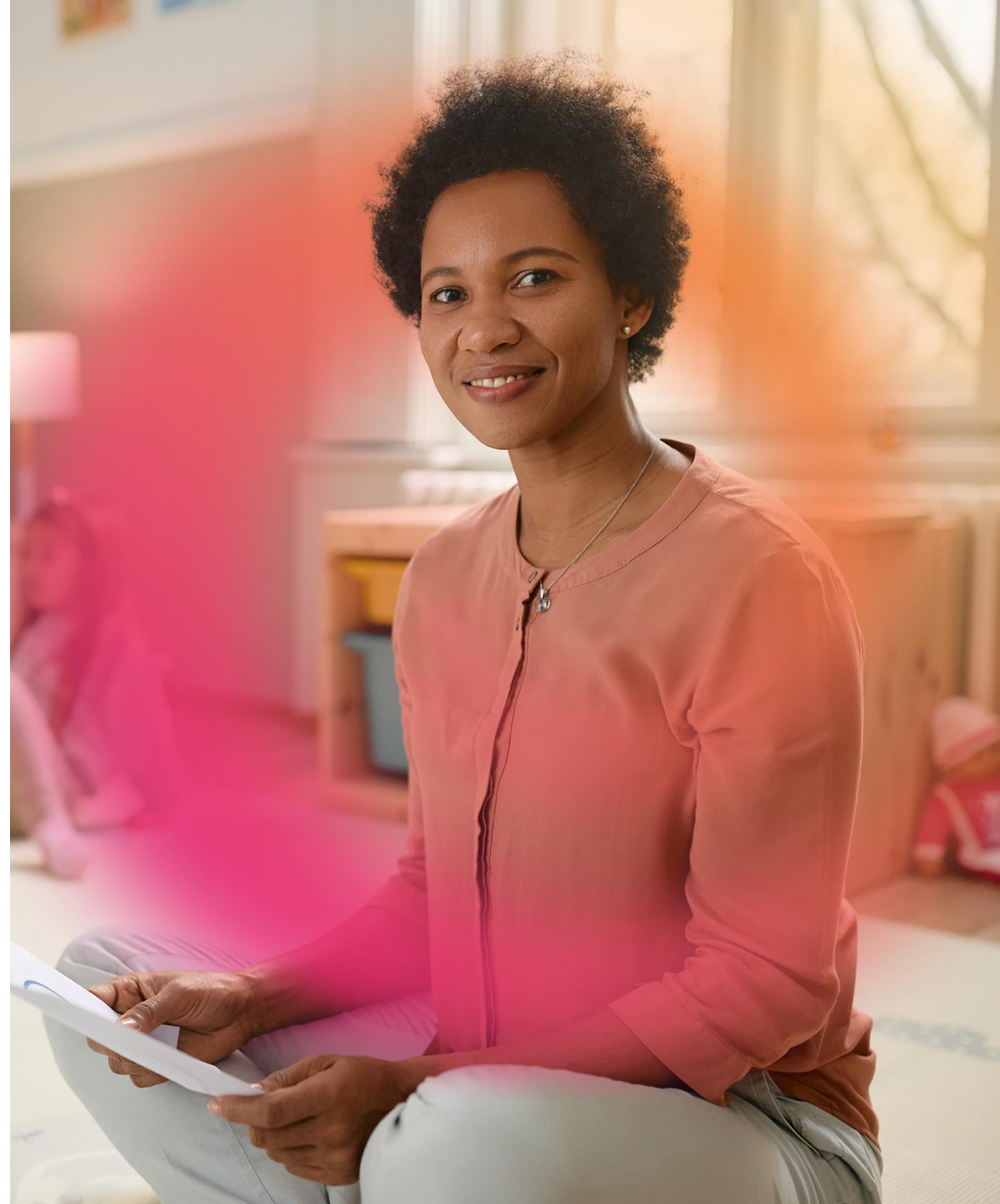
Carer's Leave Act 2023

- Coming into force on **6 April 2024**.
- **Day one right** for all employees. Up to one week of unpaid carer's leave per 12 months to provide or arrange for care for a dependant with a long-term care need.
- Leave can be taken by single or even half days.
- Notice requirement - 3 days notice OR double the length of leave, if this is longer.
- **Can I ask them to take it at another time?** Potentially - but take within a month
- **Can I ask them to prove they need it?**



Carer's leave - how can we prepare?

- Changes to documents:
 - Policies
 - Make provision to record carer's leave absences
 - Self-certification form
- Train managers
- Communicate with employees





Redundancy

Business closing their holiday club. There is a suitable vacancy in the nursery's pre-school room. Six holiday club employees affected - including one on long-term sick leave and one on maternity leave. Do you?:

- Make everyone aware of vacancy and let them know then can apply along with external candidates?
- Select between all six candidates?
- Offer it to the employee on maternity leave?





Protection from Redundancy (Pregnancy and Family Leave) Act 2023

- Applies from **6 April 2024**.
- Extends current protections from when employer knows about pregnancy up to 18 months after the birth of the child.
- For employees on adoption leave, extends to 18 months from the date of placement.
- Employees taking > 6 weeks shared parental leave are protected during leave. Employees taking < 6 weeks protected for 18 months from the birth of the child.



National Minimum Wage

- National Living Wage going up by 9.8% in April to **£11.44**. Also, now for employees 21 and over (previously 23 and over).
- An employee doesn't have to receive the NMW as a rate for every hour worked, but over the pay period, wages received / hours worked **must equal NMW**.
- Some **deductions** will reduce 'wages received' for NMW purposes, e.g. deduction of nursery fees where the employee sends their child to the nursery.
- **Uniform** deduction/purchase will reduce 'wages received' for NMW - e.g. even if just ask employees to wear 'a red top'.
- 'Hours worked' for NMW purposes includes any time spent on **training** at work or attending training in normal working hours



Worker Protection (Amendment of Equality Act 2010) Act 2023

- Coming into force in **October 2024**.
- Introduction of a duty on employers to take '*reasonable steps*' to prevent sexual harassment.
- Tribunal award uplift up to 25%.
- Separate powers of enforcement by Equality and Human Rights Commission.
- Policies, training and enforcement.



Equality Act 2010



Workers (Predictable Terms and Conditions) Act 2023

This Act will give workers a right to request a more predictable working pattern if:

- their existing hours or the times they work are uncertain; or
- they are on a fixed-term contract of less than 12 months.

It is likely to come into force in **Autumn 2024.**





Neonatal care (Leave and Pay) Act 2023

Right to leave

Day one right to take up to 12 weeks' leave for employees where a neonate (child which is 28 days old or younger) is admitted to hospital for care for a continuous period of seven days or more.

Right to pay

Right to statutory neonatal pay where the employee meets service and minimum earnings criteria (expected to be 26 weeks and Lower Earnings Limit which is currently £123 per week).

Expected to come into force in **April 2025**



Questions





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