

On the horizon



-  Details awaited
-  Open consultation; imminent implementation; ongoing activity
-  In force

	SUMMARY & KEY LINKS	KEY DATES
	Sexual harassment and non-disclosure agreements (NDAs)	
	<p>In early 2018, the Women and Equalities Committee (WEC) launched an inquiry into sexual harassment in the workplace. This culminated in July 2018 in the publication of its report on Sexual harassment in the workplace, which found that the Government, regulators and employers are all failing to tackle the issue.</p> <p>On 18 December 2018, the Committee published the Government's response to its report. The response stated that the Government intends to progress some of the WEC recommendations, including an announcement to introduce a new code of practice on sexual harassment.</p> <p>The Government will also consult on the evidence base for introducing a new legal duty on employers to prevent sexual harassment in the workplace, whether any additional protections are needed for volunteers and interns, and extending employment tribunal time limits for Equality Act 2010 cases.</p> <p>The Government has also indicated it will consult on the use of non-disclosure agreements (NDA). It has stated that they require better regulation and a clearer explanation of the rights that a worker cannot sign away by entering into an NDA. The consultation will specifically address the use of a standard approved confidentiality clause.</p> <p>There is currently no estimated time frame yet as to when the Government's proposals will be taken forward.</p> <p>SEXUAL HARASSMENT REPORT & RESPONSE</p> <p>WEC's report on sexual harassment in the workplace (November 2018)</p> <p>Government response to sexual harassment in the workplace report (November 2018)</p>	<p>18 December 2018: Government published its response to the WEC's 'Sexual harassment in the workplace' report.</p> <p>25 July 2018: WEC published its report on 'Sexual harassment in the workplace'.</p>

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	Worker status	
	<p>In November 2016, Matthew Taylor was commissioned to conduct an independent review into modern working practices. Taylor's report was published in July 2017, making a wide number of recommendations aimed at reforming working life for casual and atypical workers. In November 2017, the Work and Pensions and BEIS committees published a joint report and draft bill in response. However, the Government did not publish its response to the Taylor Review until February 2018 and, at the same time, launched 4 consultations processes.</p> <p>In December 2018, the Government published its Good Work Plan in response to the 4 consultation papers. The Good Work Plan makes a number of key proposals including aligning the employment status tests for employment rights and tax purposes, introducing the right to request a fixed working pattern, and abolishing the Swedish derogation for agency workers. The publication of the Good Work Plan was swiftly followed by a series of draft legislation, most of which is due to come into force on 6 April 2020.</p> <p>TAYLOR REPORT</p> <p>Government's Good Work Plan (December 2018)</p> <p>Government response to Taylor report (February 2018)</p> <p>Taylor report (July 2017)</p> <p>LEGISLATION</p> <p>The Employment Rights (Miscellaneous Amendments) Regulations 2019</p> <p>The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018</p> <p>The Agency Workers (Amendment) Regulations 2019</p> <p>WORK AND PENSIONS' AND BEIS' COMMITTEES' REPORT</p> <p>A framework for modern employment (November 2017)</p> <p>CONSULTATIONS</p> <p>Employment status (February 2018)</p> <p>Agency workers (February 2018)</p> <p>Enforcement of employment rights (February 2018)</p> <p>Measures to increase transparency in the UK Labour market (February 2018)</p> <p>RECENT OR IMPENDING LITIGATION</p> <p>Uber BV v Aslam (CA) (December 2018)</p> <p>IGWB v RooFoods Ltd t/a Deliveroo (HC) (December 2018)</p> <p>Pimlico Plumbers v Smith (SC) (June 2018)</p> <p>Gascoigne v Addison Lee (EAT) (April 2018)</p>	<p>6 April 2020: The Agency Workers (Amendment) Regulations 2018</p> <p>17 December 2018: Good Work Plan published</p> <p>February 2018: Government response to Taylor report published</p> <p>February 2018: Consultation papers launched on back of Taylor's recommendations</p> <p>November 2017: 'A framework for modern employment' published by Work and Pensions and BEIS Committees</p> <p>July 2017: Taylor's report published</p> <p>Case law</p> <p>19 December 2018: CA judgment in Uber BV v Aslam</p> <p>30 October 2018: CA heard Uber's appeal in Uber BV v Aslam</p> <p>February 2017: CA judgment in Pimlico Plumbers v Smith</p> <p>13 June 2018: SC judgment in Pimlico Plumbers v Smith</p> <p>11 May 2018: EAT judgment in Gascoigne v Lee</p> <p>14 November 2017: CAC judgment in IGWB v RooFoods Ltd t/a Deliveroo</p> <p>10 November 2017: EAT judgment in Uber BV v Aslam</p>

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	Gender pay gap reporting	
	<p>Regulations came into force on 6 April 2017, requiring employers with 250 or more employees to publish on their UK website their median and mean gender pay and bonus gap figures annually from April 2018 (with the first data snapshot being taken on 5 April 2017).</p> <p>In August 2018, BEIS Committee published its report on gender pay gap reporting (employment aspects). It made a number of recommendations for strengthening gender pay gap reporting and for closing the gap, one of which included extending reporting obligations to companies with 50 or more employees from 2020.</p> <p>GENDER PAY GAP REPORTS</p> <p>BEIS Committee report on gender pay gap reporting (employment aspects) (August 2018)</p> <p>Gender pay gap service</p> <p>LEGISLATION</p> <p>Equality Act Commencement Order</p> <p>The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017</p> <p>GUIDANCE</p> <p>ACAS Guide: Managing gender pay reporting (December 2017)</p> <p>CONSULTATIONS</p> <p>Response to consultation on draft regulations (December 2016)</p> <p>Closing the gender pay gap: Consultation response (February 2016)</p> <p>Mandatory gender pay gap reporting: Consultation on draft regulations (February 2016)</p> <p>Closing the gender pay gap consultation (July 2015)</p>	<p>4 April 2019: Deadline for year 2 gender pay gap reports.</p> <p>2 August 2018: BEIS Committee report on gender pay gap reporting</p> <p>4 April 2018: Deadline for publication of first gender pay gap reports.</p> <p>6 April 2017: The gender pay gap regulations came into force.</p> <p>March 2017: ACAS published statutory guidance on the regulations.</p> <p>22 August 2016: The Equality Act 2010 (Commencement No. 11) Order 2016 brought section 78 Equality Act 2010 into force allowing regulations to be made which require employers to publish their gender pay gap.</p>

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 Holiday pay	
<p>Case law has led to significant developments in the way in which holiday pay should be calculated, and in particular which aspects of remuneration should be included. Judgments of the ECJ and EAT indicate that any payments intrinsically linked to the performance of the employee's tasks under the contract of employment must be included. This will include overtime and commission; other aspects of remuneration have not yet been expressly considered but may include bonus and work-related allowances such as shift premiums.</p> <p>In January 2015, new regulations came into force aimed at limiting employers' potential liabilities in respect of holiday pay claims. The regulations provide a two-year 'backstop' on holiday pay claims brought as an unlawful deduction from wages. The regulations apply to claims presented to tribunal on or after 1 July 2015.</p> <p>However, in November 2017, an ECJ judgment held that where a worker is prevented or deterred from taking holiday because the entity for whom they are working erroneously asserts they are self-employed, and therefore that they have no entitlement to paid holiday, there will be no limit to the back holiday pay which can be claimed. Unfortunately this case then settled before returning back to the UK courts so no further clarity is available.</p> <p>The Government's Good Work Plan states that there will be a campaign to boost awareness and understanding with regards to entitlement to paid annual leave, with new guidance and an improved holiday entitlement calculator. There will also be state enforcement of vulnerable workers' holiday pay rights so that these workers can raise a complaint with a state enforcement body which will pursue the payment of arrears on the worker's behalf, backed up by financial penalties.</p> <p>As a result of the Good Work Plan, the Government has published The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 which is due to come into force on 6 April 2020. It will change the rules for calculating a week's pay for holiday pay purposes, increasing the reference period for variable pay from 12 weeks to 52 weeks.</p> <p>LEGISLATION</p> <p>The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018</p> <p>Deductions from wages (Limitation) Regulations 2014</p> <p>GOOD WORK PLAN</p> <p>Good Work Plan (December 2018)</p> <p>CASES</p> <p>Hein v Albert Holzkamm GmbH & Co (ECJ) (December 2018)</p> <p>Flowers and others v East of England Ambulance (EAT) (April 2018)</p> <p>King v The Sash Window Workshop Ltd (ECJ) (November 2017)</p> <p>Lock v British Gas Trading Ltd (CA) (October 2016)</p> <p>Lock v British Gas Trading Ltd (EAT) (December 2015)</p> <p>Lock v British Gas Trading Ltd (ET) (February 2015)</p> <p>Bear Scotland v Fulton (EAT) (August 2014)</p> <p>Lock v British Gas Trading Ltd (ECJ) (May 2014)</p> <p>Williams v British Airways Plc (ECJ) (September 2011)</p>	<p>6 April 2020: The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 comes into force.</p> <p>November 2017: Sash Window's ECJ judgment. ECJ held that in certain circumstances, misclassified workers may bring back claims for holiday pay unlimited in time.</p> <p>December 2016: Bear EAT appeal hearing.</p> <p>October 2016: Lock CA judgment. The Court of Appeal upheld the EAT's decision. British Gas applied to the Supreme Court for permission to appeal but this was refused.</p> <p>February 2016: Lock EAT judgment.</p> <p>25 March 2015: Lock ET judgment.</p>

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	Data protection	
	<p>The General Data Protection Regulation (GDPR) was adopted in Europe in April 2016 and came into force on 25 May 2018. It introduces a new regime for data protection with far-reaching consequences for employee data. There are more restrictions, new rights for employees to object to processing, wider rights of subject access and much more onerous penalties.</p> <p>LEGISLATION</p> <p>General data protection regulation</p> <p>Data Protection Act 2018</p> <p>Data Protection Act 1998</p> <p>GUIDANCE</p> <p>ICO Guide to the GDPR</p> <p>ICO Getting ready for the GDPR checklist</p> <p>ICO overview of the GDPR</p> <p>ICO: Preparing for the GDPR - 12 steps to take now (March 2018)</p> <p>ICO: Data protection self-assessment toolkit (March 2018)</p> <p>ICO: Lawful basis for processing consent (March 2018)</p>	<p>25 May 2018: The Data Protection Act 2018 came into force.</p> <p>25 May 2018: The GDPR took effect in Member States.</p>

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<p> Business immigration - Brexit</p> <p>One of the most high profile issues relating to Brexit is the future status of European nationals currently working in the UK, and it has been one of the key aspects of the UK's negotiations with the EU. The current Home Office guidance is that European nationals do not need to take any steps at this stage.</p> <p>A Withdrawal Agreement (WA) has now been agreed at a political level between the EU and UK which sets out the terms of the UK's exit from the EU and the impact on the future immigration status of EU citizens wishing to reside in the UK. However, the terms of the WA still remain subject to Parliament's approval. Under the terms of the WA, the Government will implement a settled status scheme which governs the process EU citizens (and family members) who are resident in the UK by 31 December 2020 need to follow to apply for a new immigration status. This will allow those EU citizens (and family members) to remain in the UK indefinitely.</p> <p>In the event of a no deal scenario, the Government has made a number of reassurances for EU citizens who are resident in the UK by 29 March 2019 (NB the implementation period running up to 31 December 2020 will not apply); however, the EU has so far kept tight-lipped on whether any of these reassurances will be reciprocated for UK citizens living in the EU.</p> <p>SETTLED STATUS SCHEME</p> <p>EU Settlement Scheme: EU citizens and their family members (November 2018)</p> <p>Settled and pre-settled status for EU citizens and their families (November 2018)</p> <p>EU Settlement Scheme: Employer toolkit (July 2018)</p> <p>UK/EU PAPERS</p> <p>Policy Paper - UK's future skills-based immigration system (December 2018)</p> <p>Policy paper - Citizens' Rights - EU citizens in the UK and UK nationals in the EU (November 2018)</p> <p>Questions and answers – the rights to EU and UK citizens as outlined in the Withdrawal Agreement (November 2018)</p> <p>Draft Withdrawal Agreement (November 2018)</p> <p>Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom (November 2018)</p> <p>REPORTS</p> <p>Migration Advisory Committee (MAC) report: EEA migration (September 2018)</p>	<p>30 June 2021: The settled status application scheme will close.</p> <p>29 March 2019 - 31 December 2020: This will be the implementation period during which EU citizens can still come to the UK on the same basis as now but if they wish to stay longer than 3 months they will be required to register.</p> <p>29 March 2019: This date marks the UK's exit from the European Union and is the date which the Government proposes to use to determine future immigration status.</p>

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<p> Trade secrets</p> <p>The Trade Secrets Directive aims to introduce a minimum harmonised standard of protection for trade secrets across Member States. It introduces a definition of 'trade secret' and prescribes when a trade secret will be acquired, used or disclosed unlawfully. It sets out the sanctions which Member States must implement for any breaches of trade secret protection.</p> <p>The Directive does not protect trade secrets which are acquired, used or disclosed for the purpose of protecting the general public interest in relation to whistleblowing activity which reveals misconduct, wrongdoing or illegal activity.</p> <p>The Directive does not impact on current UK laws governing restraints of trade such as non-compete covenants.</p> <p>LEGISLATION</p> <p>Directive on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (Trade Secrets Directive)</p> <p>The Trade Secrets (Enforcement etc) Regulations 2018</p> <p>CONSULTATION</p> <p>Government response to technical consultation on trade secrets (May 2018)</p> <p>Consultation on draft regulations concerning trade secrets (February 2018)</p>	<p>9 June 2018: The Trade Secrets (Enforcement etc) Regulations came into force</p> <p>15 May 2018: The Government published its response to consultation</p> <p>19 February 2018: The Government launched a technical consultation on draft regulations to implement the Directive in the UK.</p> <p>June 2016. The Directive was approved by the European Council. Member States have 2 years in which to introduce legislation to give effect to the Directive. Member States may introduce greater protections than those contained in the Directive.</p>

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